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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BNSF RAILWAY COMPANY, on
behalf of THE UNITED STATES OF
AMERICA

Plaintiff,

vs.

THE CENTER FOR ASBESTOS
RELATED DISEASE, INC.,

Defendant.

Civil Action No.: CV-19-40-M-DLC

RELATOR’S TRIAL BRIEF

Relator, BNSF Railway Company (“BNSF”), by and through its attorneys of record, Knight Nicastro MacKay, LLC, hereby submit its Trial Brief.

ANTICIPATED LEGAL ISSUES

One of the central issues in this case is whether a B-Reader interpretation of a plain chest x-ray noting an abnormality—by itself—is a “diagnosis” under 42 U.S.C. § 1395rr-1. The meaning of the requirements for Environmental Health Hazard Medicare eligibility established under 42 U.S.C. § 1395rr-1 is a purely legal question that this Court must decide.

Ultimately, whether “B-Read Only” claims are “false” under the False Claims Act depends on the Court’s interpretation of the statute. Relator previously explained in its motion for partial summary judgment and supporting brief why the term “diagnosis” must be given its ordinary and commonly understood meaning. (*See* Docs. 78–79). Relator will rely on that briefing, but it is worth noting here that B-Readers do not believe their interpretations are a diagnosis. Even CARD does not believe a B-Reader radiographic interpretation is “diagnosis” of a medical condition. CARD even tells its patients in written correspondence that a B-Reader interpretation is not—and cannot be—a diagnosis and explains why:

Dear [REDACTED]

You participated in asbestos health screening on 12/11/2014 and at that time you were not diagnosed with an asbestos related disease (ARD). You received a letter at the conclusion of your appointment that informed you that your chest x-ray and CT would be sent out for a second read by other doctors specially trained in reading radiographic images for dust diseases (like asbestos).

One of these doctors did identify a small abnormality on your CT image. It is nothing that has significant health implications nor is it considered a diagnosis of an asbestos related disease.

A diagnosis of asbestos related disease is based on exposure histories, time since exposure, medical provider assessment, and radiographic images. The reader who identified the abnormality did not have the rest of this information.

While the reasonableness of CARD's interpretation of the statute may be relevant to whether it *knowingly* caused false claims to be submitted, the falsity of the "B-Read Only" claims depends on this Court's judicial interpretation of the meaning of "diagnosis" in 42 U.S.C. § 1395rr-1.

The Court denied Relator's partial summary judgment motion on the "B-Read Only" claims because there was insufficient evidence regarding whether the Social Security Administration was fully informed as to CARD's practices for EHH coverage certification. (*See* Doc. 131, 5–6). As a preliminary matter, government knowledge of the falsity of a claim is not a defense to liability. Under the False Claims Act: "[t]he requisite intent is the knowing presentation of what is known to be false. That the relevant government officials know of the falsity is not in itself a defense." *United States ex rel. Hagood v. Sonoma Cnty. Water Agency*, 929 F.2d 1416, 1421 (9th Cir. 1991); *see also United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1156 (2d Cir. 1993) ("[T]he statutory basis for an FCA claim is the defendant's knowledge of the falsity of its claim, see § 3729(a) & (b), which is not automatically exonerated by any overlapping knowledge by government officials.").

If SSA had approved CARD's practices, that information would be relevant to whether CARD "knowingly" submitted false claims, but government knowledge that a claim is false does not make the claim any less false.

To the extent SSA’s knowledge of CARD’s certification practices is relevant, since the Court issued its order, the Social Security Administration has testified through a 30(b)(6) deposition. (Ex. 1: Dep. SSA 30(b)(6) Heather Hillman, May 16, 2023 (“Dep. SSA”). SSA representative Heather Hillman testified that SSA has never trained nor instructed CARD how to fill out an EHH Checklist (Dep. SSA 36:08–37:15), and that the SSA had not approved submitting patients based on a B-Reader interpretation alone. (Dep. SSA 80:12–81:05). In fact, when made aware of the practice in April 2023—for the first time—SSA representatives informed CARD that any patient submitted based on a B-Read alone would be denied if the physician who completed the form did not agree that the patient had been diagnosed with one of the specified conditions. (Dep. SSA 79:12–84:04). The SSA further confirmed that this had always been SSA’s standards and practice. *Id.*

Thus, the undisputed (and stipulated) facts establish that:

- B-Readers do not diagnose patients;
- CARD does not believe that a B-Reader interpretation is a diagnosis;
- CARD tells its patients a B-Reader interpretation is not a diagnosis of an asbestos-related disease, nor is it anything that “has significant health implications”;
- the SSA did not train or instruct CARD on how to fill out an EHH Checklist;

- the SSA was unaware of CARD's practice of submitting patients for EHH Medicare based on a B-Read alone until April 2023; and
- SSA has never approved submitting patients based on a B-Read interpretation alone when the certifying medical provider does not believe the patient has been diagnosed with one of the specified conditions.

To clarify the issues that will be presented to the jury, the Court should rule before trial begins that an individual must be diagnosed with one of the specified conditions to be eligible for EHH Medicare under 42 U.S.C. § 1395rr-1 and that a B-Read interpretation, alone, is not a diagnosis of such a condition.

ANTICIPATED EVIDENTIARY ISSUES

1. Exclusion of Senator Baucus Testimony

Relator previously moved to exclude Senator Baucus's testimony. (Doc. 86). Relator argued (1) that Senator Baucus was not timely disclosed, (2) that Senator Baucus would impermissibly testify to establish legislative intent of 42 U.S.C. § 1395rr-1; (3) that Senator Baucus lacked the proper foundation to testify about the thoughts and opinions of Kathleen Sebelius or CARD, and (4) that the danger of unfair prejudice substantially outweighed the probative value of Senator Baucus's testimony. (Doc. 86).

The Court held that Senator Baucus had been timely disclosed but reserved ruling on the prejudicial effect and foundation of Senator Baucus's testimony until the testimony has been offered at trial. (Doc. 132, 7–8). It is anticipated that CARD

intends to offer Senator Baucus's testimony by videotaped deposition in lieu of live testimony. Relator thus renews its motion to exclude Senator Baucus's testimony.

Senator Baucus has been deposed twice. The transcripts from both depositions are submitted as Exhibits 2 and 3. Put simply, Senator Baucus can offer no testimony that is relevant to Relator's claims. Relator alleges that CARD violated the False Claims Act by presenting or causing to be presented false claims to the federal government for payment or approval and by creating false statements and records that were material to false or fraudulent claims. Senator Baucus was not involved in the CARD clinic's creation of statements and records or submissions of forms and claims. Nor did he advise CARD as to the meaning of 42 U.S.C. § 1395rr-1. Furthermore, Senator Baucus was not in communication with the CARD (nor the SSA) about how the SSA would interpret, administer or enforce the law. Accordingly, his testimony is irrelevant to CARD's mental state and whether they knowingly submitted false claims.

In response to Relator's motion to exclude Senator Baucus, CARD claimed the Senator would not be offered to establish legislative history (Doc. 100), but that is exactly what he attempts to testify to. As explained in Relator's previous brief, Senator Baucus's testimony about the meaning of the EHH provision of the Affordable Care Act is wholly irrelevant. The meaning of the statute must be interpreted by this Court, not Senator Baucus. The meaning of the statute is subject

to the ordinary rules of statutory construction. The Court must interpret the meaning of a statute according to its plain language. Here, the statute is clear—an individual must be diagnosed with one of the specified conditions to be eligible for EHH Medicare.

If the Court determines that the plain language of the statute is ambiguous, the Court can refer to legislative history to determine the legislative intent of the law. Importantly, the Supreme Court has made clear that the testimony of one legislator is not a proper source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984). Senator Baucus does not speak for the entire Congress. To the extent the official legislative history is silent regarding the meaning of the EHH provision in the Affordable Care Act, the Court will have to resort to other rules of statutory construction.

Because Senator Baucus's testimony cannot be used to establish legislative history, his testimony regarding the circumstances that led to the inclusion of the EHH provision is also irrelevant. Senator Baucus played a role in enacting 42 U.S.C. § 1395rr-1, but after the statute was enacted, his role was over. It is, and has been, the SSA's role to enforce that law, and it is this Court's role to interpret that law. Senator Baucus cannot tell this Court what the statute means, tell SSA how it should enforce the law, or pardon CARD for submitting false claims under the law. Senator Baucus's testimony is thus irrelevant and should be excluded.

Even if the Court concludes that Senator Baucus may be able to offer relevant testimony, he should nevertheless be excluded from testifying under Fed. R. Evid. 403 because the probative value of his testimony would be substantially outweighed by the danger of unfair prejudice. The probative value of any relevant testimony Senator Baucus may be able to offer is minimal. But the danger of unfair prejudice from allowing Senator Baucus to testify - seemingly give his stamp of approval as a long-time senator - would be substantial.

CARD wants to have Senator Baucus testify as the champion for Libby in the Senate about Libby's health crisis in order to suggest that CARD could not have committed fraud because it purportedly had good intentions. There are obvious problems related to a witness testifying to another's knowledge, intent and good character. The danger of the unfair prejudice that would result if Senator Baucus is allowed to testify is made apparent by the titles for and descriptions of Senator Baucus in CARD's expert disclosures and response brief. In its expert disclosure and response brief, CARD refers to Senator Baucus as "Hon. Max Baucus," "Ambassador Baucus," a "beloved and highly respected 36-year Senator for the people of Montana," and "a champion for Libby." Accordingly, even if Senator Baucus offers some marginally relevant testimony, it should nevertheless be limited – if not outright excluded - under Fed. R. Civ. P. 403.

2. Exclusion of Undisclosed Witnesses

CARD supplemented its initial disclosures on May 8, 2023, to identify three CARD patients as witnesses who had not previously been disclosed. (Ex. 4: CARD 2d Supp. Initial Discl.). Specifically, CARD disclosed for the first time that Gayla Benefield, Jimmie Sevre, and Judy Woller may be witnesses at trial. These witnesses should not be allowed to testify for several reasons. First, they were not timely disclosed under Fed. R. Civ. P. 26(a) or (e). Nor is there any justification for their late disclosure. Finally, none of these witnesses have any knowledge of the false claims at issue in this matter. These CARD patients are not the subject of any false claims allegations. The only reason to have them testify is to have the jury hear potentially prejudicial testimony from those diagnosed with asbestos related disease. But this case is not about the CARD patients who are sick. This case is about the patients who are not. These three witnesses have no probative evidence to offer on that topic. Accordingly, their testimony should also be precluded under Fed. R. Evid. 403.

Benefield, Sevre, and Woller were disclosed for the first time a month before trial. Their disclosures do not even identify the subjects of information each witness possesses, as required by Rule 26(a). Given the late timing, Relator has not been able to depose the late-disclosed witnesses or conduct any other discovery into what their testimony may be. It appears unlikely that the witnesses even possess any relevant

information. They are not the subject of any of the alleged false claims, and Relator does not expect that they would have any information about the medical treatment or diagnosis of any of the patients who are the basis of false claims. It is anticipated that these witnesses are merely intended to offer impermissible character evidence.

The same non-disclosure issue is true for CARD's witness, Jaimie Szeinuk. Dr. Szeinuk never submitted an expert witness report and no expert witness disclosure of any kind was submitted disclosing Dr. Szeinuk's proposed testimony. Whether Dr. Szeinuk is a fact witness or an expert witness, his proposed testimony has not been disclosed absent a Declaration related to Mount Sinai's sub-award, which is now moot. Relator's counsel objected at the beginning of Dr. Szeinuk's proposed preservation deposition taken via Zoom on May 22, 2023. For the same reasons stated above related to undisclosed CARD patient witnesses, Relator also moves to exclude the testimony of Dr. Szeinuk.¹

The Court previously issued an order prohibiting testimony from witnesses who were not timely disclosed unless the failure was substantially justified or is harmless. (Doc. 132 at 4). The Court should apply that order to these late-disclosed witnesses and prohibit Gayla Benefield, Jimmie Sevre, Judy Woller and Dr. Szeinuk from testifying.

¹ We do not yet have Dr. Szeinuk's deposition.

3. CARD's Discovery Violations and Waiver of Attorney Client Privilege

The parties deposed The Social Security Administration through Rule 30(b)(6) on May 16, 2023.² During the middle of the deposition, the SSA deponent testified that CARD had engaged in an email exchange with the SSA in March and April of 2023 regarding whether a patient can be submitted for EHH Medicare based on a B-Read interpretation alone. The SSA witness testimony caused CARD's counsel to produce *in the middle of the deposition* not only the March and April email chain, but a flash drive containing an additional 2,500 emails, between CARD and the SSA dating back to 2010 that had not previously been produced.

While CARD's counsel indicated that he only received the flash drive of emails the day before the deposition, Relator had longstanding discovery requests seeking production of any such emails for years. CARD's response clearly indicates it was on notice of this request since 2021. (*See* Doc. 93-23).

Included in the emails was an exchange between CARD and SSA directly relevant to one of the issues central to this case. Recall that in response to Relator's partial summary judgment motion, CARD contended both in briefing and at the hearing in this matter on September 12, 2022, without evidence, that it was following

² The parties will conclude the remaining 30(b)(6) SSA deposition on the morning of June 8, 2023.

the SSA's *instructions* by certifying "B-Read Only" patients for EHH coverage, and that the SSA was well aware of this practice:

CARD has been doing these environmental health hazard checklists 12 years the way SSA told them to, and obviously there's been many instances where the CARD staff have been informed, you know, the SSA staff, that this was a B-read-only. And so it's not a surprise to CARD -- I mean, to SSA staff that there are B-read onlys, qualifications under the HH checklist.

Ex. 5: Hrg. Tr. 21:14-20, Sept. 12, 2022.³

So they know. And, believe me, CARD staff has been in contact with the SSA virtually, you know, every week for years. SSA staff know that this, that this is part of the lawsuit. They know these issues, and they still keep accepting it.

Ex. 5: Hrg. Tr. 28:21-25.

So, Your Honor, just because CARD relied on all those B-readers for all those forms, all they were doing is following the law. And that's what SSA told them to do, and that's what they've done ever since 2010, and every part of the government is aware of that, and every part of the government sustains it. It can't be a false claim when everything that the CARD is doing is approved by the government. It doesn't make sense.

Thanks.

THE COURT: All right. The matter is fully submitted.

Ex. 5: Hrg. Tr. 100:1-11

³ Relator is aware it will need to order the official transcript and will supplement this exhibit with a certified copy of the Excerpt of Transcript.

Based on what occurred at the SSA 30(b)(6) witness deposition, CARD's representations before this Court were flagrantly false.

The email exchange revealed at that deposition, written in early April 2023, proves that what CARD stated on the record at this hearing was false. SSA told CARD directly that an individual with a B-Read only is not considered diagnosed. (*See* Exs. 138 & 139). Furthermore, the SSA witness testified that the SSA had ***never*** trained, instructed or told CARD in any manner that this practice was acceptable in any way. (Ex. 1: Dep. SSA 93:5-95:5.)

While the failure to produce all of the emails before the SSA deposition is problematic, the failure to produce this specific email chain in Exhibits 138 and 139 - which referenced a topic central to the purpose of the deposition - is extremely troubling.

As the deposition concluded, CARD disclosed approximately 2,500 emails based on the request of Relator's counsel. Some of those emails contain communications between CARD and its counsel. These emails show that CARD's counsel drafted the response sent to SSA in April in an attempt to suggest that SSA was changing its policies. SSA's response makes it clear that is not the case: SSA's policies have not changed and SSA was not aware of CARD's practice of submitting patients for EHH Medicare without a diagnosis, let alone approve of such a practice. (Ex. 139). CARD's attempt to create a false record is worrisome, especially given

CARD's position - and CARD counsel's representations - at the summary judgment hearing.

CARD's counsel has attempted to claw back his emails with CARD, claiming that they were only produced to him by CARD the night before the SSA deposition and that he did not have time to review them. But CARD's willful failure to review the emails before they were produced is not tantamount to inadvertent disclosure. At the very least, the Court should find that CARD has waived attorney-client privilege and that any emails that have already been produced between CARD and its counsel are admissible. The Court should also sanction CARD for its untimely disclosure of highly relevant emails.

These are issues which Relator's counsel is prepared to address at the June 8, 2023 Pretrial Conference.

DATED this 1st day of June, 2023.

KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

CERTIFICATE OF SERVICE

I certify on this 1st day of June, 2023, a copy of the foregoing document was served upon the following persons by the following means:

<u>1-3</u>	CM/ECF
<u> </u>	Mail
<u> </u>	Hand Delivery
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u> </u>	Email

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By: /s/ W. Adam Duerk
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BNSF

v.

CARD

Heather Hillmann

May 16, 2023



**AB Litigation
SERVICES**

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<p>IN THE UNITED STATES DISTRICT COURT</p> <p>FOR THE DISTRICT OF MONTANA</p> <p>MISSOULA DIVISION</p> <hr/> <p>VIDEO DEPOSITION OF HEATHER HILLMANN</p> <p>May 16, 2023</p> <hr/> <p>BNSF, Case No.</p> <p>CV-19-40-M-DLC</p> <p>Plaintiff,</p> <p>vs.</p> <p>CARD,</p> <p>Defendant.</p> <hr/>	<p>1 APPEARANCES:</p> <p>2</p> <p>3 KNIGHT NICASTRO MACKAY, LLC</p> <p>4 By W. Adam Duerk, Esquire</p> <p>5 283 W. Front Street, Suite 203</p> <p>6 Missoula, Montana 59802</p> <p>7 duerk@knightnicastro.com</p> <p>8 On behalf of BNSF.</p> <p>9</p> <p>10 U.S Department of Justice</p> <p>11 United States Attorney's Office</p> <p>12 By Michael Kakuk, Assistant U.S. Attorney</p> <p>13 901 Front Street, Suite 1100</p> <p>14 Helena, Montana 59626</p> <p>15 michael.kakuk@usdoj.gov</p> <p>16 On behalf of the SSA.</p> <p>17</p> <p>18 BECHTOLD LAW FIRM, PLLC</p> <p>19 By Timothy Bechtold, Esquire</p> <p>20 PO Box 7051</p> <p>21 Missoula, Montana 59807</p> <p>22 tim@bechtoldlaw.net</p> <p>23 On behalf of CARD.</p> <p>24</p> <p>25 ALSO PRESENT: Sarah Berry</p> <p>Social Security Administration</p> <p>Dwayne Beuthel</p> <p>Videographer</p>
Page 3	Page 4
<p>1 Pursuant to Notice, the Video Deposition of HEATHER</p> <p>2 HILLMANN, called by the Plaintiff, taken on May 16,</p> <p>3 2023, commencing at 10:32 AM Mountain Time before</p> <p>4 Annie Sager, Court Reporter and Notary Public within</p> <p>5 and for the State of Colorado.</p> <p>6</p> <p>7 EXAMINATION PAGE</p> <p>8 Mr. Duerk: 6, 159</p> <p>9 Mr. Bechtold: 109, 169</p> <p>10</p> <p>11 EXHIBIT DESCRIPTION PAGE</p> <p>12 Exhibit 135 Subpoena 5</p> <p>13 Exhibit 136 Declaration 106</p> <p>14 Exhibit 137 Statement of Disputed Facts 95</p> <p>15 Exhibit 138 E-mail 66</p> <p>16 Exhibit 139 E-mail 76</p> <p>17 Exhibit 140 HI 00803.001 102</p> <p>18 Exhibit 141 HI 00803.050 102</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: The time is 10:32.</p> <p>3 Today is May 16th, 2023. This begins the</p> <p>4 video-recorded deposition of Heather Hillmann</p> <p>5 taken in the matter of BNSF versus CARD.</p> <p>6 This deposition is being taken at</p> <p>7 1961 Stout Street, Denver, Colorado, 80202. The</p> <p>8 court reporter today is Annie Sager. The</p> <p>9 videographer is Dwayne Beuthel.</p> <p>10 Counsel will introduce themselves and</p> <p>11 the parties they represent beginning with the</p> <p>12 plaintiff's counsel first.</p> <p>13 MR. DUERK: Adam Duerk for Relator BNSF.</p> <p>14 MR. BECHTOLD: This is Tim Bechtold on</p> <p>15 behalf of the Center for Asbestos Related</p> <p>16 Disease.</p> <p>17 MR. KAKUK: Michael Kakuk, U.S.</p> <p>18 Department of Justice.</p> <p>19 MS. BERRY: Sarah Berry for the</p> <p>20 Social Security Administration.</p> <p>21 THE VIDEOGRAPHER: Will our</p> <p>22 court reporter please swear in the deponent.</p> <p>23 (WHEREUPON, the oath was administered by</p> <p>24 the court reporter.)</p> <p>25 WITNESS RESPONSE: Yes, I do.</p>

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<p>1 THE COURT REPORTER: Thank you. Go</p> <p>2 ahead.</p> <p>3 THE VIDEOGRAPHER: You may begin.</p> <p>4 HEATHER HILLMANN,</p> <p>5 a witness in the above-entitled proceedings,</p> <p>6 after having been first duly sworn,</p> <p>7 testified under oath as follows:</p> <p>8 MR. KAKUK: Gentlemen, at the outset of</p> <p>9 this I just want to point out that per our</p> <p>10 e-mail yesterday, Ms. Hillmann is here on behalf</p> <p>11 of SSA specifically for requests 17 through 22,</p> <p>12 25 through 29, and 36 through 39.</p> <p>13 We believe these are essentially the</p> <p>14 factual requests that were in the 30(b)(6)</p> <p>15 deposition notice. The social security agency</p> <p>16 has designated somebody else for the policy</p> <p>17 questions.</p> <p>18 MR. DUEK: And in terms of the notice</p> <p>19 of deposition, I am assuming we are taking about</p> <p>20 the same paragraphs that align with what we will</p> <p>21 mark as Exhibit 135, the subpoena to SSA for</p> <p>22 30(b)(6) testimony.</p> <p>23 (WHEREUPON, Deposition Exhibit 135</p> <p>24 marked for identification by the reporter.)</p> <p>25 MR. KAKUK: That's correct. Thank you.</p>	<p>1 MR. DUEK: Thank you.</p> <p>2 MR. KAKUK: I understand that factual</p> <p>3 issues can bleed into policy questions. I am</p> <p>4 assuming that I will have to object if something</p> <p>5 is outside the scope of the requests if we get</p> <p>6 into any policy issues.</p> <p>7 I just want us all to be clear from the</p> <p>8 get-go that what that means on behalf of the</p> <p>9 agency is that the agency was not required to</p> <p>10 prepare Ms. Hillmann for that request, and any</p> <p>11 answer that Ms. Hillmann chooses to give is not</p> <p>12 on behalf of the agency.</p> <p>13 So if I just say objection, scope, we</p> <p>14 all understand moving forward what that means,</p> <p>15 and then you can continue on with the questions</p> <p>16 and answers.</p> <p>17 Does that make sense?</p> <p>18 MR. DUEK: It does to relator.</p> <p>19 MR. BECHTOLD: Yes.</p> <p>20 MR. KAKUK: Thank you.</p> <p>21 EXAMINATION</p> <p>22 BY MR. DUEK:</p> <p>23 Q Would you please state your full legal name</p> <p>24 spelling your last name.</p> <p>25 A Heather Marie Hillmann, H-I-L-L-M-A-N-N.</p>
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<p>1 Q Ms. Hillmann, have you had your deposition taken</p> <p>2 in the past?</p> <p>3 A No.</p> <p>4 Q Okay. I will go over a few ground rules today.</p> <p>5 The most important is if any of my</p> <p>6 questions are unclear or you need a break for any</p> <p>7 reason, including speaking with counsel in the</p> <p>8 room, will you just indicate that to me so that we</p> <p>9 can take a break?</p> <p>10 A Yes.</p> <p>11 Q All right. Ms. Hillmann, what is your</p> <p>12 professional title?</p> <p>13 A My professional title is subject matter expert</p> <p>14 Medicare lead, and I am also a data exchange</p> <p>15 coordinator.</p> <p>16 Q And who do you work for?</p> <p>17 A Social Security Administration.</p> <p>18 Q How long have you been employed with the</p> <p>19 Social Security Administration?</p> <p>20 A 21 years in September.</p> <p>21 Q Where have you primarily been based?</p> <p>22 A Denver.</p> <p>23 Q Okay. And what are some of your job</p> <p>24 responsibilities related to your position at SSA?</p> <p>25 A Training the field offices on different policy,</p>	<p>1 providing additional support in regards to data</p> <p>2 exchange and Medicare.</p> <p>3 Q Ms. Hillmann, it is my understanding that you've</p> <p>4 been offered by the Social Security Administration</p> <p>5 as the 30(b)(6) deponent pursuant to a subpoena</p> <p>6 issued to the SSA?</p> <p>7 A Yes.</p> <p>8 Q All right. Have you seen that subpoena and the</p> <p>9 topics referenced?</p> <p>10 A I have.</p> <p>11 Q Okay. And I have marked the subpoena itself as</p> <p>12 Exhibit 135.</p> <p>13 Do you have a copy of that in front of you?</p> <p>14 A I do.</p> <p>15 Q I think I can shoot through this pretty quickly,</p> <p>16 but it's my understanding that you were prepared</p> <p>17 to address paragraphs 17 to 22?</p> <p>18 A Correct.</p> <p>19 Q Paragraphs 25 to 29?</p> <p>20 A Yes.</p> <p>21 Q And paragraphs 36 to 39 as referenced in this</p> <p>22 subpoena, is that your understanding also?</p> <p>23 A Yes.</p> <p>24 Q Ms. Hillmann, what did you do in order to prepare</p> <p>25 to address these topics today?</p>

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1 A I reached out to a number of components in
2 headquarters, the office of information systems
3 and policy, and then the office of program support
4 as well and then the local Kalispell office in
5 addition to reaching out to my former Medicare
6 counterpart that mentored me and had a lot to do
7 with EHH cases, and she is now retired. Her name
8 is Kathy Will, formerly Kathy Suarez.

9 Q In terms of any other SSA employees, do you recall
10 the names of any individual SSA employees that
11 have worked at the Kalispell field office in
12 Montana?

13 A Terra Whiteman, Sonya Hymas, and there is a number
14 of other field office technicians, but I don't
15 have them all memorized. I do about six different
16 states.

17 Q Ms. Hillmann, was it your intent and understanding
18 in preparing for this 30(b)(6) deposition that you
19 were to seek and gather information and facts
20 related to the topics that you intend to address
21 today from a variety of different sources, both
22 human sources as well as paper sources?

23 A Correct.

24 Q And were you able to successfully accomplish that
25 task in your view?

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1 Q Ms. Hillmann, I will be referencing Exhibit 76 as
2 well as another exhibit under the program
3 operations manual system as the POMS today.

4 A Okay.

5 Q Does that make sense to you?

6 A Yes.

7 Q What generally is the POMS, if you can describe it
8 for me?

9 A It's basically our policy instructions and our
10 technicians instructions on how to process claims.

11 Q Okay. In terms of Exhibit 76, is this
12 HI 00803.050 titled developing medical requirement
13 for entitlement to EHH Medicare?

14 A Yes.

15 Q Is this one of the POMS sections that you reviewed
16 in preparation for your testimony?

17 A Correct.

18 Q If you would look through Exhibit 76 related to
19 the enumerated POMS section at the top of page 1,
20 does this appear to be a true and accurate copy of
21 the POMS for the medical requirement for
22 entitlement to EHH Medicare?

23 A Yes.

24 Q I will move to admit if Exhibit 76 hasn't already
25 been admitted.

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1 A I was.

2 Q All right. In terms of the materials that you
3 reviewed, the paper records, if you could give me
4 a survey or a basic understanding of what kind of
5 paper records you reviewed that would be helpful.

6 A Okay. I reviewed different policies that have
7 been in effect since roughly around 2010, and that
8 was HI 00803.50, HI 00803.001, emergency message
9 10042REV, and then a variety of e-mail contacts
10 back and forth regarding training for
11 social security employees.

12 Q All right. And did these written materials help
13 inform the facts that you are going to establish
14 for the record today?

15 A Absolutely.

16 Q I would like to look first at what has been marked
17 previously as Exhibit 76. You have a notebook in
18 front of you. Behind tab 3 I believe you should
19 find Exhibit 76.

20 Do you recognize this?

21 A Yes, I do.

22 Q And what is it?

23 A This is HI 00803.050. That is our policy
24 instructions for our social security technicians
25 for processing EHH claims.

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1 In terms of the POMS, what is the
2 significance of this particular section?

3 A The significance of this particular section is
4 just these are instructions for the technicians
5 that are processing the EHH claims to follow.

6 Q Okay.

7 A It's the required documentation they have to
8 follow.

9 Q And in terms of those technicians, are we talking
10 about the SSA employees who may be working at the
11 Kalispell field office in Montana?

12 A Yes.

13 Q All right. Is this essentially the set of working
14 instructions or their policy for how to look at
15 EHH forms?

16 A This is their instructions on how to process the
17 claim.

18 Q The claim itself?

19 A Uh-huh.

20 Q Okay. If you would please read section A under
21 medical requirement for entitlement to EHH
22 Medicare that would be helpful.

23 A "An individual exposed to environmental health
24 hazards (EHH) in Lincoln County, Montana, must
25 meet a medical requirement for entitlement to EHH

<p style="text-align: right;">Page 13</p> <p>1 Medicare. He or she must have been diagnosed with</p> <p>2 an asbestos-related disease (ARD) established by</p> <p>3 certain diagnostic methods."</p> <p>4 Q Ms. Hillmann, is it your understanding that this</p> <p>5 policy is the same policy that has been in place</p> <p>6 for at least the last decade related to Medicare</p> <p>7 claims under the EHH program?</p> <p>8 A Yes.</p> <p>9 Q Okay. What is the next section titled?</p> <p>10 A Developing and documenting medical requirement.</p> <p>11 Q Just generally, Ms. Hillmann, what does this</p> <p>12 section address?</p> <p>13 A This section addresses how the technician would</p> <p>14 address getting the required forms to process the</p> <p>15 claim.</p> <p>16 Q All right. And what are those required forms?</p> <p>17 A Depending on the type of claim that we are taking,</p> <p>18 if it's EHH Medicare, we are obtaining one 827,</p> <p>19 SSA-827 medical release form, and we are sending</p> <p>20 that out with the EHH checklist to the medical</p> <p>21 provider.</p> <p>22 If it involves disability, we obtain two</p> <p>23 signed SSA-827s which is the medical release form,</p> <p>24 and then we also additionally send that out with</p> <p>25 the EHH checklist to the medical provider.</p>	<p style="text-align: right;">Page 14</p> <p>1 Q All right. And just so that we are on the same</p> <p>2 page with the jury here, in terms of the medical</p> <p>3 provider, is it fair to say that in EHH Medicare</p> <p>4 claims or social security claims involving the</p> <p>5 CARD clinic, the medical provider would be CARD?</p> <p>6 A For CARD claims, yes. They're not the only ones</p> <p>7 that take in this claim. There's other</p> <p>8 physicians.</p> <p>9 Q Right.</p> <p>10 A Yes.</p> <p>11 Q Understood. And during the course of this</p> <p>12 litigation, I will represent to you that we will</p> <p>13 only be focusing on EHH claims related to CARD.</p> <p>14 A Okay.</p> <p>15 Q Okay?</p> <p>16 A Uh-huh.</p> <p>17 Q So if you could describe who is responsible for</p> <p>18 sending out those SSA-827 forms to CARD that would</p> <p>19 be helpful.</p> <p>20 A Those are field office technicians that take</p> <p>21 claims, so those are claims specialists or claim</p> <p>22 technicians or technical experts within the</p> <p>23 Kalispell field office.</p> <p>24 Q All right. Ms. Hillmann, I will represent to you</p> <p>25 that the jury will have seen or heard several</p>
<p style="text-align: right;">Page 15</p> <p>1 different names related to technicians in the</p> <p>2 Kalispell field office by the time your testimony</p> <p>3 airs.</p> <p>4 One of those names is Sonya Hymas or</p> <p>5 Sonya Peterson. I believe she had several</p> <p>6 different last names during that period.</p> <p>7 To the best of your knowledge, was</p> <p>8 Sonya Hymas an EHH technician in the Kalispell</p> <p>9 field office?</p> <p>10 A I can probably speak on that in the last couple of</p> <p>11 years that I have gotten to know her and know that</p> <p>12 she takes Medicare claims. I can't specifically</p> <p>13 tell you if she has taken EHH claims, but I'm</p> <p>14 assuming that she has within that field office.</p> <p>15 Q Fair enough.</p> <p>16 So is it fair to say that it's the EHH</p> <p>17 field office's responsibility for sending these</p> <p>18 release forms to the CARD clinic to make sure that</p> <p>19 the patients have authorized a release of their</p> <p>20 medical information back to the</p> <p>21 Social Security Administration related to EHH</p> <p>22 claims or how does that work?</p> <p>23 A Okay. So the medical release form goes with the</p> <p>24 EHH checklist to give us authorization for the</p> <p>25 medical provider to actually complete the form and</p>	<p style="text-align: right;">Page 16</p> <p>1 send that back to social security.</p> <p>2 Q Got it.</p> <p>3 A Yeah.</p> <p>4 Q Okay. So once these SSA-827 forms are sent to the</p> <p>5 medical provider, what happens next?</p> <p>6 A Could you repeat that question? I'm sorry.</p> <p>7 Q Sure. I am just trying to give the jury an idea</p> <p>8 of step-by-step what happens in the process of</p> <p>9 obtaining EHH forms.</p> <p>10 A Okay.</p> <p>11 Q And processing these Medicare claims.</p> <p>12 A Okay. So once, you know, we actually have the</p> <p>13 claimant within the office or on the phone let's</p> <p>14 say, for instance, we are going to complete step 1</p> <p>15 which is their identifying information, their</p> <p>16 social security number, and then their name and</p> <p>17 their date of birth which is at the top of the EHH</p> <p>18 checklist. In addition, we complete the 827 and</p> <p>19 leave, you know, the bottom for the claimant to</p> <p>20 sign.</p> <p>21 Once we obtain that, we send that medical</p> <p>22 release form and the EHH checklist to the CARD</p> <p>23 clinic or whatever physician that they have, and</p> <p>24 then once that information is obtained from the</p> <p>25 CARD clinic or whatever physician sends that back,</p>

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<p>1 that is when we are able to start the claims</p> <p>2 processing.</p> <p>3 Q All right. Just so that I'm as clear as I can be</p> <p>4 in front of a jury, I am looking at page 4 of</p> <p>5 Exhibit 76.</p> <p>6 Is this a copy of a blank EHH form in terms</p> <p>7 of an exemplar?</p> <p>8 A Yes.</p> <p>9 Q Okay. And is this the form that the EHH field</p> <p>10 technician would fill out in terms of step 1, the</p> <p>11 top box, with the CARD patient's name,</p> <p>12 social security number and date of birth?</p> <p>13 A Yes. That is the only box that they complete.</p> <p>14 Q Okay. Is there any other information or any other</p> <p>15 box on this form that the patient would complete</p> <p>16 with SSA?</p> <p>17 A No.</p> <p>18 Q Okay.</p> <p>19 A That would go to the physician.</p> <p>20 Q In terms of the box under step 2 on page 4, is</p> <p>21 there any information here that would be completed</p> <p>22 by the SSA?</p> <p>23 A No. We are not expertised in that area.</p> <p>24 Q Okay. So after step 1 is complete, box 1 is</p> <p>25 complete, the EHH form then goes to CARD in this</p>	<p>1 case, is that fair?</p> <p>2 A Correct.</p> <p>3 Q All right. What happens at CARD with this EHH</p> <p>4 checklist to the extent that you know?</p> <p>5 A They complete it to the best of their ability</p> <p>6 following section 1881A of the act. We don't get</p> <p>7 involved past that point. We are not medical</p> <p>8 experts, and that's outside the scope of our jobs.</p> <p>9 Q All right. And in fact, is that reflected in this</p> <p>10 section of the POMS related to what is supposed to</p> <p>11 happen with the EHH checklist?</p> <p>12 MR. KAKUK: Objection, scope.</p> <p>13 A Sorry.</p> <p>14 MR. KAKUK: Go ahead and answer.</p> <p>15 Q Go ahead.</p> <p>16 A I think it's just pretty laid out and it's pretty</p> <p>17 clear in there what our job roles are within the</p> <p>18 policy.</p> <p>19 Q All right. Let's go about it this way.</p> <p>20 Does section 2 titled EHH checklist set out</p> <p>21 your understanding of the goals and job</p> <p>22 responsibilities for what is going to happen with</p> <p>23 this EHH checklist at SSA?</p> <p>24 MR. KAKUK: The same objection.</p> <p>25 Q Okay.</p>
Page 19	Page 20
<p>1 A I can honestly just say that, you know, once we</p> <p>2 have a completed checklist that shows that there</p> <p>3 is a diagnosis underneath section 1881A of the act</p> <p>4 which is with a completed form, then we would be</p> <p>5 able to process this claim once step 2 and step 3</p> <p>6 are completed. We are not medical experts like</p> <p>7 I've previously mentioned. We don't get into the</p> <p>8 diagnosis or the diagnosis codes.</p> <p>9 Q All right.</p> <p>10 A Yeah.</p> <p>11 MR. KAKUK: Mr. Duerk, I'm sorry. I</p> <p>12 might have misunderstood. Were you talking</p> <p>13 about section 2 of the form or section 2 of the</p> <p>14 policy?</p> <p>15 MR. DUERK: I was talking about</p> <p>16 section 2 of the form.</p> <p>17 MR. KAKUK: Okay.</p> <p>18 MR. DUERK: And I was about to go into</p> <p>19 section 2 of the policy.</p> <p>20 MR. KAKUK: Apologize for anticipating.</p> <p>21 MR. DUERK: Okay. No problem.</p> <p>22 Q Ms. Hillmann, let's go about it this way. I'll</p> <p>23 reference section 2 of the policy.</p> <p>24 A Okay.</p> <p>25 Q Which I believe corresponds to section 2 of the</p>	<p>1 form, but to be clear, if we could look at the</p> <p>2 policy itself, do you see the section titled EHH</p> <p>3 checklist?</p> <p>4 A Yes.</p> <p>5 Q Would you please read that, the purpose of the EHH</p> <p>6 checklist.</p> <p>7 A "The purpose of the EHH Checklist is to obtain</p> <p>8 information from the claimant's medical source</p> <p>9 regarding the claimant's diagnosis and presence in</p> <p>10 Lincoln County, Montana. The claims</p> <p>11 representative (CR) will use the completed EHH</p> <p>12 Checklist to determine if the claimant's condition</p> <p>13 meets the medical requirement. The EHH Checklist</p> <p>14 may also provide evidence of presence in Lincoln</p> <p>15 County, Montana. (For policy on using the EHH</p> <p>16 Checklist as proof of presence in Lincoln County,</p> <p>17 Montana, see HI 00803.040B and HI 00803.040C.)</p> <p>18 See images of the EHH Checklist and cover notice</p> <p>19 in HI 00803.050B.3 in this section."</p> <p>20 Q All right. So a couple of general questions here</p> <p>21 about the EHH forms and the facts that you are</p> <p>22 aware of related to how these forms are processed.</p> <p>23 Is it your understanding based on the facts</p> <p>24 related to you by EHH technicians and field</p> <p>25 personnel that any information about a medical</p>

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1 diagnosis related to these EHH forms for CARD
2 patients is to be placed on section 2 of the EHH
3 form by the CARD physicians or the CARD medical
4 provider?
5 A Correct.
6 Q Okay. And in terms of any direction, training,
7 instruction, teaching, on-site supervision, any
8 interaction with CARD employees at the CARD
9 facility, does the SSA provide any training or any
10 teaching or any instruction by any name to CARD
11 about how to complete an EHH checklist other than
12 what is shown here in these POMS sections?
13 A No. And I have actually checked with other
14 components including the Kalispell office, and
15 that has never been a former practice.
16 Q Okay. So to the best of your knowledge as the
17 30(b)(6) deponent, based on your review of
18 information in both printed form and interviews
19 with SSA field staff and other SSA employees, is
20 it your understanding that SSA has ever taught
21 CARD how to fill out an EHH form in any regard
22 outside of what is included in these POMS?
23 A No.
24 Q Okay. In terms of the form itself, and I'm
25 looking at page 4 on Exhibit 76, what if, based on

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1 Q Okay. If you could just generally share with me
2 the information that was covered in that emergency
3 policy that would be helpful.
4 A It basically laid out the guidelines of
5 HI 00803.50 and that if the environmental health
6 hazard checklist was not completed correctly
7 meaning that there was no diagnosis, no diagnosis
8 date, and it doesn't have to necessarily -- like
9 if they marked a diagnosis, but then there is not
10 a diagnosis date, we still have to deny the claim.
11 Q All right.
12 A Yeah.
13 Q So without a diagnosis of an asbestos-related
14 condition, a CARD patient simply would not receive
15 Medicare eligibility or Medicare benefits
16 according to the SSA?
17 A Correct.
18 Q Okay. Now, in terms of the SSA's reliance on
19 these forms, does the SSA do any fact-checking or
20 independent investigation or ask for any other
21 records to support a claim for Medicare benefits
22 other than this EHH checklist?
23 A Not to my knowledge. There is no additional
24 Medicare benefits quite like this, but our claims
25 technicians, I do want to state, you know, we

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1 the facts that you're aware of, an EHH form would
2 be returned to the Social Security Administration
3 field office in Kalispell and there was a section
4 left blank, for example, if a form failed to
5 identify an asbestos-related condition or
6 conditions and its date of diagnosis, if a form
7 was lacking any information about the diagnosis or
8 diagnoses of asbestos-related conditions, would
9 the SSA be able to process that claim and approve
10 Medicare benefits for that CARD patient?
11 A No.
12 Q Why not?
13 A Because they have to meet the listing and they
14 have to have a date of diagnosis, they have to
15 have the printed name of the physician, the
16 physician's signature, and the date listed as
17 well, as well as step 3, the information within
18 step 3 and step 2.
19 And we have actually put this out in policy
20 in an emergency message, it was 10042REV that gave
21 those specific instructions, and I believe it came
22 out in 2010, archived in 2011, the latter part of
23 2011, and it was a public-facing policy, so the
24 public did have access as well as CARD to that
25 policy online.

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1 don't -- we don't check -- we are not medical
2 experts, so just like with our disability claims,
3 our claims technicians are not going to be the
4 ones checking medical references, checking,
5 you know, the medical evidence. That is not their
6 job and that is outside of the scope of their job.
7 Q All right. And to the best of the information
8 you've been able to gather, the boundaries of
9 SSA's job and the procedure for what SSA will do
10 and will not do vis-a-vis these checklists is
11 communicated to CARD?
12 A I don't know if it's communicated to CARD, but
13 it's communicated to our employees, and that's who
14 we are responsible for.
15 Q All right.
16 A Yeah.
17 Q In terms of these program operation manual systems
18 or the POMS, are these available to the public
19 online?
20 A They are.
21 Q Okay. And in terms of the emergency policy that
22 you just referenced, I'm assuming that that was
23 made available to any member of the public online
24 as well?
25 A Absolutely.

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1 Q Okay. So page back to page 4 of Exhibit 76 with
2 this EHH form, if the EHH form doesn't include a
3 diagnosis related to asbestos exposure, what
4 happens at that stage in the process when the SSA
5 field office gets the form based on the
6 information you've reviewed?
7 A If the SSA field office gets this form and we do
8 not have a diagnosis that's listed within the
9 checklist, then it's a deny.
10 Q All right. And what would be some examples of
11 denials that might occur for diagnoses that don't
12 show up in the checklist if you could give me a
13 for instance.
14 A Well, they don't meet the medical requirements of
15 the policy, so then it would be a denial based off
16 of that. We have a special code for it.
17 Q Okay.
18 A Uh-huh.
19 Q And so diagnoses that don't meet the medical
20 requirement, I'm assuming these would be diagnoses
21 of conditions that don't have anything to do with
22 asbestos exposure, for example, is that fair?
23 A Well, I mean, I can't speak on that. If we don't
24 have a completed form with, you know, the
25 impairments that are listed here and they haven't

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1 BY MR. DUERK:
2 Q Okay. Now, in terms of the rest of this POMS
3 policy, I think we have read the EHH checklist
4 heading. If you could go through each of the
5 steps that -- is it FO 872?
6 What does FO 872 stand for?
7 A That's the field office for Kalispell, Montana.
8 Q Okay. If you could go through the steps that the
9 field office in Kalispell takes to obtain a
10 completed EHH checklist that would be helpful.
11 A And you are wanting me to start on page 2?
12 Q I am.
13 A Okay. "FO 872 takes the following actions to
14 complete an EHH Checklist: Complete step 1
15 (identify the individual) on the EHH Checklist;
16 fill in the FO's fax number on the cover notice;
17 and forward the EHH Checklist with the cover
18 notice to the claimant's medical source with a
19 signed SSA-827. The name of source will appear in
20 'Remarks' in the MCS claims path or the paper
21 application."
22 Q In terms of that note, just so the jury isn't left
23 scratching their heads, what does that mean, what
24 does that indicate, the name of source will appear
25 in the "remarks" in the MCS claims path or the

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1 marked that or they haven't even marked the date
2 of diagnosis, I mean, that would be a denial.
3 Q Okay.
4 A Yeah. Because the physicians are required to be
5 following section 1881A of the act.
6 Q In terms of any medical training that you're aware
7 of possessed by any of these field technicians,
8 are any of the field technicians at the Kalispell
9 office medical doctors?
10 A No.
11 Q Are any of the field technicians in the Kalispell
12 office pulmonologists?
13 A No.
14 Q Are any of them radiologists?
15 A No.
16 Q Are any of them medical professionals of any
17 designation as far as you're aware?
18 A No.
19 Q Okay. Is it fair to say that the Kalispell field
20 office personnel are relying on CARD providers,
21 CARD doctors, to provide all of the accurate, all
22 the true and accurate information related to an
23 asbestos-related diagnosis in this EHH form?
24 MR. KAKUK: Objection, scope. Go ahead.
25 A Yes.

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1 paper application?
2 A The name of the medical provider or the name of
3 the medical source.
4 Q Okay. Gotcha.
5 And so in terms of remarks here, would an
6 example of the provider just be CARD Clinic,
7 Libby, Montana, or something to that effect?
8 A With their address.
9 Q Understood.
10 A Uh-huh.
11 Q Okay. Anything else that I failed to ask about
12 this first part, section A of the POMS?
13 A No.
14 Q Okay. So what happens when the claimant's medical
15 source gets the EHH form?
16 A So the claimant's medical source will take the
17 following actions to complete and return the EHH
18 checklist. Complete step 2, identify the
19 asbestos-related condition and its date of
20 diagnosis, and step 3, identify presence in
21 Lincoln County, Montana, fill in the printed name,
22 physician's signature and date, and return it by
23 fax to the number provided on the cover notice or
24 mail it to the Kalispell field office located at
25 275 Corporate Drive, Ashley Square Mall, Suite D,

<p style="text-align: right;">Page 29</p> <p>1 Kalispell, Montana, 59901.</p> <p>2 Q All right. Thank you.</p> <p>3 A Uh-huh.</p> <p>4 Q There is another note here that I think touches on</p> <p>5 the issue of whether any supporting medical</p> <p>6 evidence needs to be provided by CARD. If you</p> <p>7 could first read it, then I have a few questions.</p> <p>8 A Okay. "The medical source does not need to</p> <p>9 provide the supporting medical evidence."</p> <p>10 Q Okay. In terms of any other medical evidence that</p> <p>11 is submitted along with the EHH form, based on</p> <p>12 your review of the facts, your interviews in the</p> <p>13 case, your review of the paperwork, to the best of</p> <p>14 your understanding, is there anything other than</p> <p>15 the EHH form that is submitted to the field</p> <p>16 office, for example, any CT interpretive reports,</p> <p>17 any medical records, any notes from the doctor so</p> <p>18 to speak, or is it just the EHH form to the best</p> <p>19 of your understanding based on the factual</p> <p>20 information you've reviewed?</p> <p>21 A It's just the EHH checklist.</p> <p>22 Q Understood. Okay. All right.</p> <p>23 If we could turn to page 3 of Exhibit 76.</p> <p>24 It appears there is a section here about what the</p> <p>25 Kalispell field office will do to store the</p>	<p style="text-align: right;">Page 30</p> <p>1 completed EHH checklist.</p> <p>2 Is that a fair representation?</p> <p>3 A Yes.</p> <p>4 Q Okay. Would you please read this section.</p> <p>5 A Field office 872, which is the Kalispell field</p> <p>6 office, "will take the following actions to store</p> <p>7 the completed EHH Checklist: Obtain a bar code fax</p> <p>8 coversheet via the Electronic Disability Collect</p> <p>9 System," which is EDCS.</p> <p>10 "And fax the completed EHH Checklist into</p> <p>11 the Electronic Folder (EF) if the claimant is also</p> <p>12 applying for disability benefits or has a pending</p> <p>13 disability claim; and retain the completed EHH</p> <p>14 Checklist until the MBR is established. Once the</p> <p>15 MBR is established, fax the EHH Checklist into the</p> <p>16 EF using NDRed. Use a Document Type of 'Other.'</p> <p>17 The document description should show 'EHH</p> <p>18 Checklist' and confirm that the EHH Checklist is</p> <p>19 in the EF or electronic folder and legible, then</p> <p>20 shred the original."</p> <p>21 Q All right. To the best of your understanding and</p> <p>22 based on your review of the factual information</p> <p>23 and documents in this case, does this section of</p> <p>24 the POMS describe what actually occurs with those</p> <p>25 EHH forms?</p>
<p style="text-align: right;">Page 31</p> <p>1 A Yes.</p> <p>2 Q Okay. Just a couple of questions. There is a</p> <p>3 reference to the MBR here on page 3.</p> <p>4 What is the MBR?</p> <p>5 A That is the master beneficiary record, so that's</p> <p>6 going to be a record that is established for</p> <p>7 Medicare beneficiaries, retirement beneficiaries,</p> <p>8 disability beneficiaries and survivor</p> <p>9 beneficiaries.</p> <p>10 Q Okay. The other acronym NDRed, what is that</p> <p>11 reference?</p> <p>12 A That's an electronic file, and that actually</p> <p>13 stands for -- there is a lot of acronyms. Just</p> <p>14 give me one second.</p> <p>15 Q It's the government. It's okay.</p> <p>16 A Honestly, I can't remember off the top of my head.</p> <p>17 I wish they had spelled it out like they did with</p> <p>18 the Disability Collection System.</p> <p>19 Q That's okay.</p> <p>20 A But it's essentially what that electronic file</p> <p>21 is for is for most of our Medicare retirement</p> <p>22 survivors insurance beneficiaries. For our</p> <p>23 disability claimants we collect that information</p> <p>24 in EDCS which is the Electronic Disability</p> <p>25 Collection System.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q All right.</p> <p>2 A Uh-huh.</p> <p>3 Q So turning to page 4 of the POMS again, we see</p> <p>4 this EHH checklist, and so in terms of the EHH</p> <p>5 checklist then based on your review of the facts</p> <p>6 in this case, if an EHH checklist does not</p> <p>7 indicate that the patient has a diagnosis of an</p> <p>8 asbestos-related condition, does that patient</p> <p>9 become eligible for Medicare?</p> <p>10 A Again, no, they would not. If we don't have a</p> <p>11 diagnosis that is listed within the checklist or a</p> <p>12 date of diagnosis and step 2, step 3, printed</p> <p>13 name, physician signature and date is not</p> <p>14 complete, we will deny the claim.</p> <p>15 Q All right. In terms of the next program operation</p> <p>16 manuals system or POMS, I would like you to turn</p> <p>17 to what's marked as Exhibit 75. This is behind</p> <p>18 tab 4 of your notebook.</p> <p>19 A Okay.</p> <p>20 Q Ms. Hillmann, do you have Exhibit 75 in front of</p> <p>21 you?</p> <p>22 A I do.</p> <p>23 Q What is this?</p> <p>24 A This is the background for EHH Medicare, so the</p> <p>25 hospital insurance HI entitlement for individuals</p>

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1 exposed to environmental health hazards, EHH.
2 Q Is this a document that you've seen before?
3 A Yes.
4 Q And in fact, is this a document that you reviewed
5 in preparation for your deposition today?
6 A Yes.
7 Q If you would leaf through it.
8 A Okay.
9 Q And tell me if this appears to be a true and
10 accurate copy of the POMS section for
11 HI 00803.001, hospital insurance entitlement for
12 individuals exposed to environmental health
13 hazards.
14 A Yes.
15 Q Okay. If we could just focus on Exhibit 75
16 generally, what is this and what is its
17 significance?
18 A This is just the background information on EHH
19 Medicare in general, just how it came about
20 underneath the Affordable Care Act, how we added
21 the section into the Social Security Act, and it
22 just goes over the basic requirements for
23 entitlement. It's not actually processing
24 instructions, but it's giving our technicians a
25 background on it.

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1 whether it was printed or through interviews of
2 living humans at SSA, does this section on the
3 background for EHH Medicare appear to be true and
4 accurate and to the best of your understanding
5 from what you learned from others during your
6 inquiry?
7 MR. KAKUK: Objection, scope.
8 A Yes.
9 Q Okay.
10 A To my knowledge.
11 Q All right. And does it appear to you that this
12 section, section 00803.001 states that in order to
13 receive EHH Medicare there must be certain
14 individuals exposed to environmental health
15 hazards and diagnosed with a medical condition
16 caused by such exposure?
17 MR. KAKUK: The same objection.
18 A Yes.
19 BY MR. DUERK:
20 Q Okay. Based on the language that we see here, is
21 there another section that we haven't read yet for
22 background for EHH Medicare?
23 A No.
24 Q Okay. I am looking at the next paragraph that
25 starts with "currently." Could you read that part

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1 Q If we could focus on section A and the citations
2 above it, if you would read the citations.
3 A Okay. Section 1881A of the Social Security Act.
4 Q And to the best of your knowledge, Ms. Hillmann,
5 is section 1881A of the Social Security Act
6 commonly referred to as the EHH provisions of the
7 Affordable Care Act?
8 A Yes.
9 Q Okay. If you could read section A, that would be
10 helpful.
11 A Okay. "Background for EHH Medicare.
12 Section 10323 of the Affordable Care Act added
13 section 1881A of the Social Security Act effective
14 March 23rd, 2010. This section extends
15 entitlement and medical hospital insurance (HI)
16 and eligibility to enroll in Supplemental Medical
17 Insurance or SMI to certain individuals exposed to
18 environmental health hazards (EHH) and diagnosed
19 with a medical condition caused by such exposure."
20 Q All right. I'll stop you right there.
21 A Okay.
22 Q In terms of providing background for EHH Medicare,
23 in terms of the information that you reviewed,
24 both in the POMS, in your interviews with other
25 SSA employees, in terms of all of the information

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1 as well, please.
2 A "Currently, the only individuals eligible for
3 Medicare under this provision are those who were
4 present in Lincoln County, Montana and have an
5 asbestos-related disease diagnosis. April 2010 is
6 the earliest possible effective date of
7 entitlement based on a March 2010 filing date."
8 Q All right. Now, in terms of these two POMS
9 sections, aside from these POMS sections are you
10 aware of any source of any other material that may
11 have been used to train, teach or instruct
12 individuals at the CARD clinic related to filling
13 out EHH forms?
14 A No.
15 Q Okay. And I want to make sure that I'm as
16 exhaustive as I can be here, and I don't mean to
17 beat a dead horse.
18 Did you look for any evidence that SSA had
19 provided training or instruction, direction or
20 supervision to the CARD clinic in terms of the
21 proper way to submit or fill out EHH forms other
22 than what we see here in the POMS?
23 A I did. I reached out to headquarters, I reached
24 out to the Kalispell manager and I reached out to
25 my former counterpart that used to head Medicare

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1 in my same position, she is now retired,
 2 Kathy Suarez or Kathy Will, and I could not find
 3 anything to that extent.
 4 Q In terms of the way that you tried to turn up any
 5 information along those lines, did you ask
 6 questions about any type of training or any type
 7 of education or any type of instruction that may
 8 have occurred at any time in the history of SSA
 9 working with CARD on the EHH program?
 10 A I did.
 11 Q Okay. And according to your search, is it fair to
 12 say that the information you uncovered revealed no
 13 training of CARD employees along these lines ever
 14 existed?
 15 A SSA employees have never trained CARD.
 16 Q All right.
 17 A Uh-huh.
 18 Q So would it be fair to say that if there was any
 19 claim that a training or an instruction by SSA in
 20 Libby, Montana of CARD officials or CARD employees
 21 in terms of filling out an EHH form, is it fair to
 22 say that if anyone suggested that it had ever
 23 occurred, you found no evidence or facts in your
 24 search to support that?
 25 A Correct.

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1 did you look for any correspondence from the CARD
 2 clinic requesting training or asking about having
 3 Social Security Administration field
 4 representatives or staff from the Kalispell office
 5 coming out to CARD and providing instruction or
 6 training or guidance about any matter related to
 7 EHH Medicare?
 8 A I did not find any correspondence.
 9 Q All right. In terms of these POMS sections, both
 10 Exhibit 75 and Exhibit 76, do you see any language
 11 in either of these program operational manual
 12 system publications that say anything about a
 13 B read only being a sufficient basis for EHH
 14 Medicare?
 15 A No.
 16 Q In terms of any communication outside of these
 17 POMS in terms of other POMS sections, the
 18 emergency policy that you mentioned earlier or any
 19 of the other information that you've referenced
 20 here today that you accessed during your
 21 preparation for this 30(b)(6) deposition, did you
 22 see any other materials from the
 23 Social Security Administration advising CARD that
 24 a B read only would itself qualify an individual
 25 for EHH Medicare benefits?

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1 Q Okay. Did you find any information about any SSA
 2 individuals or employees ever visiting Libby,
 3 Montana or the CARD clinic?
 4 A No.
 5 Q Okay. Did you find any information or any written
 6 materials related to anybody from the
 7 Social Security Administration ever providing CARD
 8 with any awards?
 9 A I did reach out to our headquarters components and
 10 they tried to track down monetary funds as well as
 11 the exemplary awards, and we couldn't find any
 12 records of that, but our regional commissioner
 13 did -- she did mention the possibility that there
 14 was a regional-level award, but she has no record
 15 of it.
 16 Q Okay. Ms. Hillmann, I will represent to you that
 17 I have seen a photograph of what appears to be
 18 some sort of a plaque or a trophy of some kind
 19 giving CARD some recognition for something.
 20 Perhaps Mr. Bechtold may ask you some
 21 questions about that, but have you seen any
 22 correspondence, any information about any type of
 23 award outside of this photograph of a trophy?
 24 A No.
 25 Q Okay. And in terms of any correspondence on file,

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1 A No.
 2 Q In terms of the appropriate route for obtaining
 3 Medicare benefits, outside of the EHH form, is
 4 there any other avenue for a CARD patient or
 5 anyone else to obtain EHH Medicare other than an
 6 EHH form being submitted to the
 7 Social Security Administration?
 8 A No.
 9 MR. KAKUK: Objection, scope.
 10 A Sorry. No.
 11 BY MR. DUERK:
 12 Q Okay. Based on all of the facts that you
 13 reviewed, based on all of your interviews in this
 14 case, based on your review of information and
 15 factual materials, did you see any correspondence
 16 or any writings, e-mails of any kind from the SSA
 17 saying that a B read by itself was sufficient to
 18 trigger Medicare eligibility for a CARD patient?
 19 A No.
 20 Q In terms of the EHH form itself then, is the
 21 submission of an EHH form that includes a
 22 diagnosis of an asbestos-related disease or
 23 condition the only avenue, route or mechanism that
 24 you found through your factual inquiry of assuring
 25 that a patient would be Medicare eligible under

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1 the EHH Medicare program?

2 A Yes.

3 Q So for example, are you familiar with what a

4 B read is?

5 A Absolutely not. That is outside the scope of my

6 job.

7 Q All right. Understood. Let me just describe it

8 for you this way generally.

9 A Okay.

10 Q I will represent to you that a B read is -- it can

11 be a report from a specialist radiologist who has

12 been certified by NIOSH to read either a chest

13 x-ray or in some circumstances a CT scan.

14 First of all, is that information that

15 you've ever heard before about B readers?

16 A Uh-uh. It's not within our listed policies, so I

17 wouldn't know and neither would our technicians.

18 Q All right.

19 A It's outside the scope of our job.

20 Q And in terms of whether or not it's relevant to

21 you within the scope of your job, do you

22 necessarily, not to put too fine a point on it,

23 but do you necessarily even care what a B reader

24 is?

25 A No.

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1 technicians don't get into B reads. We don't get

2 into all the medical issues with that. We follow

3 the checklist, and if everything is in the

4 checklist, we process our claims that way

5 following policy.

6 It's just like any other type of Medicare.

7 You have to have -- for international volunteers

8 or for a disability SUP, you have to have required

9 forms for each type of Medicare, and if you don't

10 have those required forms, then you are going to

11 be disallowed.

12 Q Understood.

13 A Yeah.

14 Q So in terms of the EHH checklist form, is it fair

15 to say that the technicians at SSA when it comes

16 to box number 2 about the diagnosis and how it was

17 arrived at, is it fair to say that SSA technicians

18 are relying on CARD to provide true and accurate

19 information on those forms based on the materials

20 you've reviewed?

21 A Correct.

22 Q Okay. And aside from the EHH form itself and,

23 again, I am sorry to be beating this to death, but

24 I just want to be really clear.

25 Aside from getting an EHH form from the

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1 Q Okay. So my question is this. Based on your

2 review of all of the factual information, did you

3 see any mechanism within the EHH Medicare program

4 for a CARD patient to receive Medicare benefits if

5 only a B reader's checklist or interpretive report

6 for a chest x-ray or CT were submitted to the

7 Kalispell field office?

8 MR. BECHTOLD: Foundation.

9 THE COURT REPORTER: Pardon?

10 MR. BECHTOLD: Foundation.

11 BY MR. DUEK:

12 Q I asked her if she ever saw any example of that

13 occurring in her factual investigation. Did you?

14 A No.

15 Q Okay. So Ms. Hillmann, I am asking basically a

16 logical question.

17 Based on your review of the facts in this

18 case, did you see any evidence that if a B read,

19 an interpretive form was sent to the Kalispell

20 field office, did you see any evidence of any CARD

21 patients that would receive Medicare eligibility

22 or Medicare benefits based on that B read alone?

23 A Okay. I guess I need you to repeat the question.

24 Q Sure.

25 A Because I think to be honest with you, our

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1 CARD clinic related to CARD patient Medicare

2 claims, is there any additional avenue, any

3 separate piece of paper, any work around, any

4 exceptional route to getting Medicare benefits for

5 a CARD patient that you came across during your

6 review of facts in this case other than an EHH

7 checklist?

8 A No.

9 Q Okay. It's 11:30. I would ask that we take a

10 short rest break.

11 THE VIDEOGRAPHER: The time is 11:26.

12 We are off the record.

13 (Break taken.)

14 THE VIDEOGRAPHER: The time is 11:34.

15 We are back on the record.

16 MR. KAKUK: Mr. Duerk, during the break

17 I believe Ms. Hillmann had something that she

18 wanted to clarify about people traveling to

19 Montana to conduct training. I believe the

20 question was limited to Libby, but in case it

21 wasn't, Ms. Hillmann, was there more information

22 you wanted to provide?

23 MR. DUEK: Why don't I ask a question

24 about that directly.

25 MR. KAKUK: Fair.

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<p>1 BY MR. DUERK:</p> <p>2 Q Ms. Hillmann, I was asking questions about</p> <p>3 training in Libby. I may have failed to ask if</p> <p>4 there was training generally in Montana.</p> <p>5 Based on what Mr. Kakuk is presenting on</p> <p>6 the record, is there anything that comes to mind</p> <p>7 for you related to that topic?</p> <p>8 A There was training for social security employees</p> <p>9 from our regional office employees. Mary Lisa</p> <p>10 Lewandowski, our regional commissioner. Our</p> <p>11 current regional commissioner was there.</p> <p>12 Nancy Berrihill, Kathy Will or Kathy Suarez,</p> <p>13 Kelly Hansen and Chris DiGiacomo.</p> <p>14 Q All right. And in terms of each of the</p> <p>15 individuals that you just named, is it fair to say</p> <p>16 that they are governments employees, not CARD</p> <p>17 employees?</p> <p>18 A Correct.</p> <p>19 Q Okay. And so in terms of the trainings in Montana</p> <p>20 likewise is it fair to say that the trainings</p> <p>21 provided were trainings from government employees</p> <p>22 to other government employees related to the EHH</p> <p>23 Medicare program?</p> <p>24 A Correct.</p> <p>25 Q Okay. In terms of the documents that you've</p>	<p>1 reviewed and the interviews that you have</p> <p>2 conducted, were there any aspects or elements of</p> <p>3 those trainings that were inconsistent with what</p> <p>4 we have already reviewed in terms of the POMS</p> <p>5 sections?</p> <p>6 A No.</p> <p>7 Q Okay. And during those trainings, based on the</p> <p>8 information that you reviewed related to the</p> <p>9 facts, was there any information that indicated</p> <p>10 that that training of government employees</p> <p>11 included any training that would allow for a CARD</p> <p>12 patient to receive Medicare benefits without a</p> <p>13 diagnosis of asbestos-related disease?</p> <p>14 A Can you repeat the question?</p> <p>15 Q Sure. I am trying to focus just on this training</p> <p>16 among government employees in Montana.</p> <p>17 A Okay.</p> <p>18 Q Based on the factual inquiry that you made, did</p> <p>19 you see any information that indicated to you that</p> <p>20 those trainings included anything about allowing</p> <p>21 patients from CARD who did not have a diagnosis of</p> <p>22 asbestos-related disease to become Medicare</p> <p>23 eligible?</p> <p>24 A No.</p> <p>25 Q Okay. And specifically did you see anything in</p>
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<p>1 the information that you reviewed that would have</p> <p>2 allowed CARD patients to receive Medicare</p> <p>3 eligibility for life with only a B read?</p> <p>4 A No.</p> <p>5 Q Ms. Hillmann, I would like to cover the individual</p> <p>6 topics that you were asked to address in the</p> <p>7 subpoena which has been marked as Exhibit 135 for</p> <p>8 purposes of this deposition. I will start with</p> <p>9 paragraph 17 which is on page 11 of that subpoena.</p> <p>10 Do you see that in front of you?</p> <p>11 A Yes.</p> <p>12 Q Okay. I will read the topic for you. Please tell</p> <p>13 me if I have read it correctly.</p> <p>14 "The Social Security Administration's</p> <p>15 designated deponent must identify the SSA</p> <p>16 employees who trained CARD staff to fill out the</p> <p>17 environmental health hazards checklist in 2011."</p> <p>18 Did I read paragraph 17 correctly?</p> <p>19 A Yes.</p> <p>20 Q Aside from the information that you have already</p> <p>21 provided, is there any other information on</p> <p>22 paragraph 17 that we haven't covered?</p> <p>23 A No, just that we have never trained CARD staff on</p> <p>24 the EHH checklist.</p> <p>25 Q All right. Paragraph 18, I will read it. Please</p>	<p>1 tell me if I have read it correctly, and then I</p> <p>2 will have a few follow-ups. Okay?</p> <p>3 A Okay.</p> <p>4 Q Paragraph 18. "The</p> <p>5 Social Security Administration's designated</p> <p>6 deponent must testify whether CARD staff have</p> <p>7 filled out the environmental health hazards</p> <p>8 checklists according to the training SSA provided</p> <p>9 CARD staff in 2011 from 2011 until the present</p> <p>10 day."</p> <p>11 Did I read that correctly?</p> <p>12 A Yes.</p> <p>13 Q Aside from the testimony that you have already</p> <p>14 provided, do you have any additional information</p> <p>15 to share on that topic?</p> <p>16 A No, just that we have never provided CARD staff</p> <p>17 any type of training.</p> <p>18 Q All right. Paragraph 19.</p> <p>19 "When a physician at CARD determines a</p> <p>20 patient has asbestosis by interpretation of a</p> <p>21 computed tomographic radiograph of the chest, CARD</p> <p>22 staff enter the patient's name, social security</p> <p>23 number and date of birth in the step 1 section of</p> <p>24 the environmental health hazards checklist. Check</p> <p>25 the asbestosis box in the impairment section of</p>

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<p>1 step 2 of the environmental health hazards</p> <p>2 checklist, enter the date the CARD physician made</p> <p>3 the interpretation and the date of diagnosis</p> <p>4 section of step 2, enter the dates the patient was</p> <p>5 present in Lincoln County, Montana in step 3, and</p> <p>6 the CARD physician prints and signs the</p> <p>7 physician's name and dates the environmental</p> <p>8 health hazards checklist."</p> <p>9 "The Social Security Administration's</p> <p>10 designated deponent must testify whether this is</p> <p>11 the SSA approved method of filling out the</p> <p>12 environmental health hazards checklist."</p> <p>13 Aside from the testimony that you have</p> <p>14 already provided, do you have anything additional</p> <p>15 to add in response to paragraph 19?</p> <p>16 A I do. A step 1 is completed by social security.</p> <p>17 We fill in the identifying information, and that's</p> <p>18 in HI 00803.50.</p> <p>19 Q All right. And in terms of section 1, just for</p> <p>20 the jury's edification and reference, I am looking</p> <p>21 at Exhibit 76, page 4, at the EHH exemplar.</p> <p>22 Step 1 is basically the first box on the</p> <p>23 EHH form on page 4, is that right?</p> <p>24 A Correct.</p> <p>25 Q Okay. Anything else to add in response to</p>	<p>1 paragraph 19?</p> <p>2 A No.</p> <p>3 Q Okay. Paragraph 20.</p> <p>4 "When a B reader qualified physician</p> <p>5 determines a patient has asbestosis by</p> <p>6 interpretation of plain chest x-ray or a computed</p> <p>7 tomographic radiograph of the chest, CARD staff</p> <p>8 enter the patient's name, social security number</p> <p>9 and date of birth in the step 1 section of the</p> <p>10 environmental health hazards checklist, check the</p> <p>11 asbestosis box in the impairment section of step 2</p> <p>12 of the environmental health hazards checklist,</p> <p>13 enter the date the B reader physician made the</p> <p>14 interpretation in the date of diagnosis section of</p> <p>15 step 2, enter the dates the patient was present in</p> <p>16 Lincoln County, Montana in step 3, and the CARD</p> <p>17 physician prints and signs the CARD physician's</p> <p>18 name and dates the environmental health hazards</p> <p>19 checklist."</p> <p>20 "The Social Security Administration's</p> <p>21 designated deponent must testify whether this is</p> <p>22 the SSA approved method of filling out the</p> <p>23 environmental health hazards checklist."</p> <p>24 First, did I read that accurately?</p> <p>25 A You did read it accurately, excuse me, but for</p>
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<p>1 step 1, social security completes step 1 in that</p> <p>2 section of policy or on the EHH checklist.</p> <p>3 And as far as step 2 and step 3, you know,</p> <p>4 our technicians are not going to know the</p> <p>5 background of a B reader. We are just assuming</p> <p>6 that the physician that completed section 2 and</p> <p>7 section 3 followed section 1881A of the act and we</p> <p>8 don't get into the medical interpretations or</p> <p>9 background of this checklist.</p> <p>10 Q All right. Is it fair to say that you rely on</p> <p>11 CARD physicians to fill out boxes 2 and 3,</p> <p>12 sections 2 and 3 of the EHH form truly and</p> <p>13 accurately?</p> <p>14 MR. KAKUK: Objection, scope.</p> <p>15 A Yes.</p> <p>16 BY MR. DUERK:</p> <p>17 Q Okay. Paragraph 21.</p> <p>18 "When a physician at CARD determines a</p> <p>19 patient has pleural thickening or pleural plaques</p> <p>20 by interpretation of a computed tomographic</p> <p>21 radiograph of the chest, CARD staff enter the</p> <p>22 patient's name, social security number and date of</p> <p>23 birth in the step 1 section of the environmental</p> <p>24 health hazards checklist, check the pleural</p> <p>25 thickening and pleural plaques box in the</p>	<p>1 impairment section of step 2 of the environmental</p> <p>2 health hazards checklist, enter the date the CARD</p> <p>3 physician made the interpretation in the date of</p> <p>4 diagnosis section of step 2, enter the dates the</p> <p>5 patient was present in Lincoln County, Montana in</p> <p>6 step 3, and the CARD physician prints and signs</p> <p>7 the physician's name and dates the environmental</p> <p>8 health hazards checklist."</p> <p>9 "The Social Security Administration's</p> <p>10 designated deponent must testify whether this is</p> <p>11 the SSA approved method of filling out the</p> <p>12 environmental health hazard checklist."</p> <p>13 Aside from the testimony that you have</p> <p>14 already provided, anything else that you feel is</p> <p>15 necessary to add in response to paragraph 21?</p> <p>16 A Yes. Step 1 is completed by social security</p> <p>17 again. Anything within step 2 and step 3, the</p> <p>18 physician should be following section 1881A of the</p> <p>19 act. We do not step into that realm of pleural</p> <p>20 thickening or pleural plaques. That's outside the</p> <p>21 realm of our job.</p> <p>22 Q Whose job is that?</p> <p>23 A That is the physician.</p> <p>24 Q All right. Not SSA's?</p> <p>25 A Correct.</p>

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1 Q Okay.

2 A We are not qualified to make those determinations.

3 Q All right. And in fact, when it comes to any

4 information on section 2 or section 3 of the EHH

5 form in Exhibit 76, page 4, does SSA based on your

6 review of all the facts in this case wade into any

7 of these boxes to double-check, second-guess or

8 overread what the physicians have placed here from

9 the CARD clinic related to their patients?

10 A No.

11 Q Let's see. I believe I was on paragraph 22. I

12 will read it, and please tell me if I have read it

13 correctly.

14 "When a B reader qualified physician

15 determines a patient has pleural thickening or

16 pleural plaques by interpretation of plain chest

17 x-ray or a computed tomographic radiograph of the

18 chest, CARD staff enter the patient's name,

19 social security number and date of birth in the

20 step 1 section."

21 I am going to try to speed this up, because

22 I think the beginning of all of these is

23 essentially the same.

24 A Okay.

25 Q Okay. At the bottom it says again, "The Social

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1 the physician, the physician's signature and the

2 date. Outside of that, that's outside of the

3 scope of our job.

4 Q All right. And I don't want to summarize

5 everything inaccurately, but I am going to attempt

6 to, and then tell me if I have done it unfairly.

7 It sounds to me like in terms of this EHH

8 form, what the SSA field techs are looking for is

9 whether there is a diagnosis of an

10 asbestos-related condition, is that fair?

11 A Correct.

12 Q Okay. And if there is not an asbestos-related

13 condition or an asbestos-related disease, is it

14 also fair to say based on your review of the facts

15 that that patient isn't eligible for Medicare?

16 A Correct.

17 Q Okay. But if the CARD physician has indicated in

18 section 2 of this form that there is a diagnosis

19 of an asbestos-related condition caused by

20 exposure to Libby asbestos, then the patient is

21 eligible for Medicare based on the information

22 you've reviewed, is that fair?

23 A Correct.

24 Q Okay. What if the information that's included in

25 section 2 is false?

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1 Security Administration's designated deponent must

2 testify whether this is the SSA approved method of

3 filling out the environmental health hazards

4 checklist."

5 Based on your view of paragraph 22 and in

6 light of the testimony you have provided already

7 today, is there any other response that you need

8 to give?

9 A Again, step 1 is completed by social security.

10 Step 2 and step 3 should be followed by the

11 physician following section 1881A of the act.

12 Social security employees do not get involved with

13 step 2 and step 3.

14 Q All right. So looking at the EHH form itself

15 then, Exhibit 76, page 4, when it comes to making

16 any notes or any observations or any distinctions

17 in section 2 of the EHH form under the heading of

18 the column minimum medical evidence required, what

19 do SSA field staff do when looking at this form

20 based on the factual information you reviewed,

21 anything?

22 A They just check to make sure that the individual

23 has a diagnosis that is listed within the EHH

24 checklist, that there is a date of diagnosis,

25 step 3 is completed, there is the printed name of

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1 For example, what if a patient's EHH form

2 was filled out completely perfectly and

3 completely, there was a first name, a middle

4 initial, a last name, a social security number and

5 a date of birth filled out by SSA, and then step 2

6 was also completed by the provider with

7 information indicating that a patient had an

8 asbestos-related disease diagnosis.

9 Are you with me so far?

10 A Uh-huh.

11 Q All right. Let's also in this hypothetical look

12 at step 3, and is step 3 a section that is also

13 filled out by CARD?

14 A Correct.

15 Q Okay. And then the bottom of section 3 below

16 whether the individual is present in Lincoln

17 County, Montana during the relevant time period,

18 there is the section for both the printed name of

19 the physician and the CARD physician's signature

20 and a date for that signature, right?

21 A Uh-huh.

22 Q Okay. Is that a yes?

23 A Yes.

24 Q All right. So in this hypothetical, all of the

25 information appears to indicate a diagnosis of an

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<p>1 asbestos-related condition with a date of</p> <p>2 diagnosis, the presence in Lincoln County, Montana</p> <p>3 section appears to have been met based on the</p> <p>4 information that is there, and there is a doctor's</p> <p>5 printed name from CARD, a physician's signature</p> <p>6 and a date.</p> <p>7 Are you with me?</p> <p>8 A Yes.</p> <p>9 Q Okay. Let's say in this hypothetical the</p> <p>10 impairment, the box that's checked next to the</p> <p>11 diagnosed impairment is asbestosis.</p> <p>12 A Okay.</p> <p>13 Q Okay. Let's also say that asbestosis has a</p> <p>14 diagnosis code of 5010, is that right?</p> <p>15 A Uh-huh.</p> <p>16 Q Is that a yes?</p> <p>17 A Yes, that is correct.</p> <p>18 Q And that the date of diagnosis is filled out with</p> <p>19 a handwritten or typed date section.</p> <p>20 A Uh-huh.</p> <p>21 Q In terms of that information, if SSA through any</p> <p>22 means became aware that in fact there was not a</p> <p>23 diagnosis of asbestos-related disease or that</p> <p>24 there was not a date of diagnosis of</p> <p>25 asbestos-related disease or that the impairment</p>	<p>1 that had been marked was in fact untrue or</p> <p>2 incorrect, would that patient be Medicare eligible</p> <p>3 based on all of the information, the facts and the</p> <p>4 conversations that you had in preparation for your</p> <p>5 deposition today?</p> <p>6 MR. KAKUK: Objection, scope. Go ahead.</p> <p>7 A No.</p> <p>8 BY MR. DUEK:</p> <p>9 Q Okay.</p> <p>10 A And I do want to expand on this a little bit.</p> <p>11 Q Sure.</p> <p>12 A I just recently received some e-mails from CARD</p> <p>13 March 21st, 2023 where I believe it was --</p> <p>14 Q Wait. I'm sorry. When?</p> <p>15 A March 21st, 2023.</p> <p>16 Q So this would have been -- today's date is</p> <p>17 May 16th, so you received these less than a month</p> <p>18 ago?</p> <p>19 A That they had filled out two checklists for two</p> <p>20 beneficiaries that they didn't feel were</p> <p>21 diagnosed, and I instructed the Kalispell office</p> <p>22 to follow the EM 10042REV and deny the claims.</p> <p>23 Q Wait. I'm sorry. So you learned from CARD --</p> <p>24 A Just recently in March.</p> <p>25 Q That two patients --</p>
Page 59	Page 60
<p>1 A I didn't directly. This e-mail was sent to</p> <p>2 Terra Whiteman, the Kalispell manager.</p> <p>3 Q Okay. And so the e-mail, I think it --</p> <p>4 A And this was our first time hearing of it, because</p> <p>5 I have searched all the records all the way back</p> <p>6 to 2010, so this is the first time ever seeing</p> <p>7 anything like this come from CARD.</p> <p>8 Q All right. There's a good starting place. I'm</p> <p>9 going to have some more questions about this</p> <p>10 e-mail in a minute, but let's stick with the</p> <p>11 hypothetical.</p> <p>12 A Okay.</p> <p>13 Q So it sounds like this hypothetical has happened.</p> <p>14 You have learned information that an EHH form</p> <p>15 completed by CARD was completed inaccurately in</p> <p>16 some way, is that fair?</p> <p>17 A Uh-huh.</p> <p>18 Q Is that a yes?</p> <p>19 A That's a yes.</p> <p>20 Q Okay. And once you learned that that EHH form was</p> <p>21 filled out inaccurately, what did you do?</p> <p>22 What did the Social Security Administration</p> <p>23 do based on your review of the facts?</p> <p>24 A They contacted me, and I instructed them to deny</p> <p>25 the claim.</p>	<p>1 Q All right. In those two cases did those</p> <p>2 individuals have a diagnosis of an</p> <p>3 asbestos-related disease?</p> <p>4 A I wouldn't be able -- they stated that they didn't</p> <p>5 find that these were diagnosed with an</p> <p>6 asbestos-related disease, but they had completed</p> <p>7 the form.</p> <p>8 Q CARD said these cases --</p> <p>9 A Correct.</p> <p>10 Q And this happened just recently in March?</p> <p>11 A 21st, 2023.</p> <p>12 Q And SSA's response was to deny the claim?</p> <p>13 A Absolutely.</p> <p>14 Q You seem confident about that. Why was it</p> <p>15 absolutely SSA's response to deny the claim?</p> <p>16 A Because you can't complete an EHH checklist and</p> <p>17 state that somebody -- marking a person diagnosed</p> <p>18 with one of these diseases, but stating that you</p> <p>19 don't feel they are diagnosed with that disease.</p> <p>20 As a qualified physician, you are signing</p> <p>21 off stating that you feel that they have this</p> <p>22 certain diagnosis, and you put the date of</p> <p>23 diagnosis and you completed this form following</p> <p>24 section 1881A of the act.</p> <p>25 Q And SSA is relying on CARD to be true and accurate</p>

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1 in these EHH forms?

2 A Correct.

3 Q And so in this particular instance, somebody at

4 CARD indicated that the EHH form was for patients

5 that didn't have a diagnosis?

6 A Correct.

7 Q And SSA's concern or your concern was that the EHH

8 form that had been submitted was not accurate?

9 A Correct.

10 Q And so as a result what was the conclusion, what

11 happened?

12 A We denied the claims.

13 Q All right. Is that action consistent with what

14 should occur with EHH Medicare claims that are

15 submitted when the information on them turns out

16 not to be true about a diagnosis?

17 MR. KAKUK: Objection, scope.

18 A Correct.

19 BY MR. DUERK:

20 Q Okay. And why do you say that?

21 A Because that would be fraudulently filling out one

22 of these forms. If you bring it to our attention

23 that you filled out a form like this, this EHH

24 checklist, and that you are marking that this

25 person is diagnosed with this impairment, with

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1 this date of diagnosis that you're signing off on

2 it and you're stating that you don't feel that

3 they're diagnosed with this condition, that to us

4 is fraud.

5 Q In terms of this March 21st, 2023 e-mail, aside

6 from this e-mail, based on your review of the

7 facts, your interviews, your factual inquiry in

8 this case, have you seen any other correspondence

9 from CARD that alerted SSA that it was adopting

10 this same practice with EHH Medicare claim forms?

11 A No. This is the first e-mail that I have seen.

12 And as I mentioned, I went all the way back

13 looking through lots of documents and talking to

14 the Kalispell manager, talking to headquarter

15 components, looking through the Medicare lead's

16 previous information on EHH claims.

17 Q And do you recall who at CARD sent this

18 March 21st, 2023 e-mail?

19 A It was a technician under the director.

20 Q A technician under the director? And do you

21 recall from -- do you know who the director at

22 CARD was? Were they listed on this e-mail?

23 A No, they were not listed on that e-mail.

24 Q Do you have a copy of this e-mail?

25 A I'm sure I do.

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1 from March 21st, 2023, did it include

2 communication directly from CARD?

3 A Yes.

4 Q Okay. All right. So here's the situation that

5 I'm in, and perhaps you can answer some of these

6 questions and help out.

7 I will represent to you that I have

8 requested any correspondence about any

9 communication related to a B read only program or

10 CARD patients who haven't been diagnosed with

11 asbestos-related disease, but submitted for

12 Medicare, and I have been asking for that kind of

13 communication for years from CARD or its

14 individual members or any other sources, and I

15 have not received anything along those lines, and

16 I understand that we are talking about March 21st,

17 less than a month ago here.

18 In terms of this topic, was it your intent

19 to try to look for any type of correspondence or

20 communication about this topic that came to SSA

21 from the CARD clinic?

22 A I looked for everything within the subpoena

23 document.

24 Q All right.

25 A Yeah.

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1 Q I'd like to take a short break and obtain a copy

2 of that e-mail.

3 A Okay.

4 THE VIDEOGRAPHER: The time is 11:58 and

5 we are off the record.

6 (Break taken.)

7 THE VIDEOGRAPHER: The time is 12:00.

8 We are back on the record.

9 BY MR. DUERK:

10 Q All right. Ms. Hillmann, I have a few more

11 questions for you about this e-mail from the

12 March 21st, 2023 timeframe.

13 In terms of any communication around this

14 issue, and by "issue" I mean CARD submitting EHH

15 records with information that was not true on it

16 related to a diagnosis of asbestos-related

17 disease, are there any communications about this

18 topic around this timeframe that you saw from the

19 CARD clinic in your search for information?

20 A No. The only -- this is the first piece of

21 communication from CARD that covered that piece of

22 material that you were just talking about.

23 Q Okay.

24 A Uh-huh.

25 Q In terms of communication from CARD, is the e-mail

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1 in these EHH forms?

2 A Correct.

3 Q And so in this particular instance, somebody at

4 CARD indicated that the EHH form was for patients

5 that didn't have a diagnosis?

6 A Correct.

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8 form that had been submitted was not accurate?

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22 of these forms. If you bring it to our attention

23 that you filled out a form like this, this EHH

24 checklist, and that you are marking that this

25 person is diagnosed with this impairment, with

Page 62

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2 it and you're stating that you don't feel that

3 they're diagnosed with this condition, that to us

4 is fraud.

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8 this case, have you seen any other correspondence

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13 looking through lots of documents and talking to

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16 previous information on EHH claims.

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18 March 21st, 2023 e-mail?

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21 recall from -- do you know who the director at

22 CARD was? Were they listed on this e-mail?

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Page 64

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2 communication directly from CARD?

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5 I'm in, and perhaps you can answer some of these

6 questions and help out.

7 I will represent to you that I have

8 requested any correspondence about any

9 communication related to a B read only program or

10 CARD patients who haven't been diagnosed with

11 asbestos-related disease, but submitted for

12 Medicare, and I have been asking for that kind of

13 communication for years from CARD or its

14 individual members or any other sources, and I

15 have not received anything along those lines, and

16 I understand that we are talking about March 21st,

17 less than a month ago here.

18 In terms of this topic, was it your intent

19 to try to look for any type of correspondence or

20 communication about this topic that came to SSA

21 from the CARD clinic?

22 A I looked for everything within the subpoena

23 document.

24 Q All right.

25 A Yeah.

Page 61

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2 of that e-mail.

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11 questions for you about this e-mail from the

12 March 21st, 2023 timeframe.

13 In terms of any communication around this

14 issue, and by "issue" I mean CARD submitting EHH

15 records with information that was not true on it

16 related to a diagnosis of asbestos-related

17 disease, are there any communications about this

18 topic around this timeframe that you saw from the

19 CARD clinic in your search for information?

20 A No. The only -- this is the first piece of

21 communication from CARD that covered that piece of

22 material that you were just talking about.

23 Q Okay.

24 A Uh-huh.

25 Q In terms of communication from CARD, is the e-mail

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1 Q And this one e-mail from March 21st, 2023 was the
2 only document you received?
3 A Correct. And this solely just covered the
4 diagnosis.
5 Q All right. Were there any other pieces of
6 correspondence from the CARD clinic that have been
7 forwarded to the SSA recently that you reviewed in
8 preparation for your deposition today?
9 A I believe this correspondence was the only
10 continuing correspondence that I had with
11 Kalispell Montana's district manager.
12 Q Okay.
13 A To my recollection.
14 Q Okay.
15 MR. KAKUK: Can we go off the record for
16 a second?
17 MR. DUERK: Yes.
18 THE VIDEOGRAPHER: The time is 12:03.
19 We are off the record.
20 (Break taken.)
21 THE VIDEOGRAPHER: The time is 1:25. We
22 are back on the record.
23 BY MR. DUERK:
24 Q Ms. Hillmann, we have come back from a little bit
25 of a break, and during that break I will represent

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1 BY MR. DUERK:
2 Q All right. Let's begin with Exhibit 138, and I
3 apologize if I'm a little slow with this. I am
4 just getting used to this e-mail myself. It
5 appears that the e-mail train begins on page 2 of
6 Exhibit 138.
7 Do you see that in front of you?
8 A Yes.
9 Q If you could describe generally what this e-mail
10 string is about to the best of your knowledge.
11 A To the best of my knowledge, what it's conveying
12 is that Stephanie Shaw had some questions for our
13 district manager, Terra Whiteman. Stephanie is
14 from CARD, and Terra was trying to set up a
15 possible time to speak.
16 Q And what was the nature of the topic that CARD
17 wanted to discuss with Terra Whiteman from SSA?
18 A It sounded like they wanted to discuss the EHH
19 checklist in general and, you know, one of Terra's
20 comments was that she relayed the information that
21 Stephanie had conveyed to her to the regional
22 office and "because you are telling me that CARD
23 does not consider the individual diagnosed based
24 on an interpretation by a B reader, we are unable
25 to approve an EHH Medicare claim involving the

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1 that we now have in front of us a handful of
2 e-mails that I will represent to you I have not
3 seen before today.
4 Do you have two e-mail strings in front of
5 you with the lead pages sent Tuesday, April 11th,
6 2023 and Friday, April 28th, 2023? I tell you
7 what, why don't I give you the stapled copies.
8 A Yeah.
9 Q All right.
10 A Yes.
11 Q And what are these?
12 A These are e-mail correspondence between
13 Stephanie Shaw and Terra Whiteman. Terra Whiteman
14 is the district manager of Kalispell, and then
15 Stephanie Shaw appears to be from CARD.
16 Q Okay. And I will represent to you that the way
17 that we came into possession of these e-mails is
18 that after you provided some testimony about
19 e-mails from March 21st, 2023 timeframe, CARD's
20 attorney produced these e-mails for us.
21 In terms of these e-mails, I am going to
22 start with the April 11th e-mail which I would ask
23 the court reporter to mark as Exhibit 138.
24 (WHEREUPON, Deposition Exhibit 138
25 marked for identification by the reporter.)

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1 B reader at this time. Someone from our agency or
2 Medicare will be reaching out directly in the next
3 couple of weeks."
4 Q So Ms. Hillmann, does this e-mail address the
5 topic that we were discussing prior to the break
6 about a revelation that certain EHH forms
7 submitted to SSA had untrue or incorrect
8 information on them?
9 A Yes.
10 Q Okay. And according to this general timeframe,
11 April 6th, 2023, based on your review of written
12 materials and interviews that you took, based on
13 your factual inquiry, is this roughly the very
14 first time that SSA is learning that some of the
15 EHH forms submitted to its field office have
16 untrue information on them?
17 A Correct.
18 Q Okay. And what was SSA's response, if you can
19 recall?
20 A Well, when Terra actually reached out to me, she
21 explained this to me in a way that they were
22 completing the EHH checklist with a diagnosis as
23 defined under section 1881A, but they truly didn't
24 feel that that individual was diagnosed, that
25 physician that signed the form. And I explained

<p style="text-align: right;">Page 69</p> <p>1 to her if they're stating that about a specific</p> <p>2 beneficiary, then we have to deny the claim based</p> <p>3 on policy.</p> <p>4 Q Okay. And this is information related to a</p> <p>5 conversation between you and Terra or you and</p> <p>6 CARD? I'm sorry, if you could clarify.</p> <p>7 A So Stephanie Shaw who reached out to Terra and</p> <p>8 they eventually talked by phone had this</p> <p>9 conversation, so Stephanie Shaw is from CARD, and</p> <p>10 she was explaining this to Terra who is our</p> <p>11 district manager in Kalispell, Montana.</p> <p>12 And then Terra told her that she needed to</p> <p>13 talk to the regional office Medicare expert, which</p> <p>14 I am, and then I explained how the policy reads</p> <p>15 and how we would have to deny the claims, and that</p> <p>16 was our official response.</p> <p>17 Q Had this type of issue from CARD ever been</p> <p>18 elevated to you before?</p> <p>19 A No. This is the first time I'm seeing anything</p> <p>20 like this.</p> <p>21 Q In 2023?</p> <p>22 A Exactly.</p> <p>23 Q Did it cause any surprise?</p> <p>24 A It did, but, you know, by that time I think we</p> <p>25 were aware of the subpoena, so it was just kind</p>	<p style="text-align: right;">Page 70</p> <p>1 of, you know, I just assumed maybe this was tied</p> <p>2 up with whatever was going on with the subpoena.</p> <p>3 Q Okay. And in terms of the subpoena, are we</p> <p>4 talking about the subpoena for your deposition</p> <p>5 testimony?</p> <p>6 A Absolutely.</p> <p>7 Q Today?</p> <p>8 A Yes.</p> <p>9 Q Okay. So prior to this timeframe, and I am</p> <p>10 including today in this timeframe because,</p> <p>11 frankly, we are at May 16th and these e-mails are</p> <p>12 dated in April, this is the first you've heard</p> <p>13 about EHH forms that have incorrect information?</p> <p>14 A Absolutely.</p> <p>15 Q Okay.</p> <p>16 A And in my position I have been doing this since</p> <p>17 2018, and prior to that I looked through all of</p> <p>18 Kathy's stuff, and I haven't seen any kind of</p> <p>19 correspondence like this.</p> <p>20 Q So no correspondence that you're aware of --</p> <p>21 A Correct.</p> <p>22 Q -- through your inquiry had elevated this issue to</p> <p>23 your awareness related to EHH forms submitted to</p> <p>24 the Social Security Administration field office</p> <p>25 with untrue information on it?</p>
<p style="text-align: right;">Page 71</p> <p>1 A Correct.</p> <p>2 Q In terms of you spoke a moment ago about I think a</p> <p>3 conversation between or among CARD staff and SSA</p> <p>4 in which there was some claim that the CARD</p> <p>5 employees felt that a patient wasn't diagnosed.</p> <p>6 Did I hear that correctly?</p> <p>7 A Correct.</p> <p>8 Q Okay. And if you could share with me any factual</p> <p>9 information you're aware of on that basis, what</p> <p>10 was CARD essentially sharing with SSA about this</p> <p>11 category of patients?</p> <p>12 A Well, as I was previously mentioning, they just</p> <p>13 basically said that they completed the checklist,</p> <p>14 but they didn't feel that person was diagnosed</p> <p>15 with that actual EHH diagnosis, the physician that</p> <p>16 signed the form, and with that statement I told</p> <p>17 and I instructed the Kalispell manager that we</p> <p>18 cannot approve that claim.</p> <p>19 Q Okay. I want to be very clear about what specific</p> <p>20 information may have been shared with SSA during</p> <p>21 that timeframe outside of a feeling that perhaps</p> <p>22 this patient didn't have a diagnosis according to</p> <p>23 CARD employees. Okay?</p> <p>24 A Uh-huh.</p> <p>25 Q Ms. Hillmann, at any time did CARD disclose to you</p>	<p style="text-align: right;">Page 72</p> <p>1 or anyone else at SSA as far as you were aware</p> <p>2 that CARD was knowingly submitting EHH forms in</p> <p>3 support of Medicare beneficiary status for</p> <p>4 patients who did not have a diagnosis of</p> <p>5 asbestos-related disease prior to April of 2023?</p> <p>6 A No.</p> <p>7 Q Did CARD ever submit any correspondence authored</p> <p>8 by CARD to the effect that CARD was knowingly</p> <p>9 submitting patients for Medicare benefits who CARD</p> <p>10 knew did not have a diagnosis of asbestos-related</p> <p>11 disease?</p> <p>12 A Prior to that date?</p> <p>13 Q Prior to this timeframe in 2023.</p> <p>14 A No.</p> <p>15 Q For example, I would like you to turn to</p> <p>16 Exhibit 7, I'm sorry, tab 7 in your book.</p> <p>17 A Okay.</p> <p>18 Q Do you see Exhibit 123 in front of you?</p> <p>19 A Yes.</p> <p>20 Q Now, what is the date at the top of this page?</p> <p>21 A May 18, 2015.</p> <p>22 Q Okay. And do you see CARD's letterhead?</p> <p>23 A I do.</p> <p>24 Q Now, I would like to ask some questions about</p> <p>25 this. I believe this will already have been</p>

<p style="text-align: right;">Page 73</p> <p>1 admitted into evidence. Ms. Hillmann, if you</p> <p>2 would read the first paragraph here.</p> <p>3 A Okay. "You participated in an asbestos health</p> <p>4 screening on 12-11-2014, and at that time you were</p> <p>5 not diagnosed with an asbestos-related disease</p> <p>6 (ARD). You received a letter at the conclusion of</p> <p>7 your appointment that informed you that your chest</p> <p>8 x-ray and CT would be sent out for a second read</p> <p>9 by other doctors specially trained in reading</p> <p>10 radiographic images for dust diseases like</p> <p>11 asbestos."</p> <p>12 Q Okay. If you would continue reading the second</p> <p>13 paragraph.</p> <p>14 A Okay. "One of these doctors did identify a small</p> <p>15 abnormality on the CT image. It is nothing that</p> <p>16 has significant health implications, nor is it</p> <p>17 considered a diagnosis of an asbestos-related</p> <p>18 disease."</p> <p>19 Q All right. If you'd read the next paragraph.</p> <p>20 A "A diagnosis of asbestos-related disease is based</p> <p>21 on exposure histories, time since exposure,</p> <p>22 medical provider assessment and radiographic</p> <p>23 images. The reader who identified the abnormality</p> <p>24 did not have the rest of this information."</p> <p>25 Q The next paragraph, please.</p>	<p style="text-align: right;">Page 74</p> <p>1 A "We are notifying you of the finding because any</p> <p>2 type of abnormality identified by the outside</p> <p>3 reader, even if it not a diagnosis of an</p> <p>4 asbestos-related disease, qualifies you for</p> <p>5 certain medical benefits."</p> <p>6 "You are now eligible for Medicare benefits</p> <p>7 regardless of your age based on these findings.</p> <p>8 If you choose to enroll in Medicare, you would</p> <p>9 also be eligible for the Medicare Pilot Program</p> <p>10 for ARD that covers medically necessary services</p> <p>11 not covered by usual medical insurance programs.</p> <p>12 An example would be mileage, fitness club</p> <p>13 memberships, assistance with daily living.</p> <p>14 Information about these programs is enclosed."</p> <p>15 Q The next paragraph.</p> <p>16 A "In addition, you can continue to be eligible for</p> <p>17 free ongoing screenings for asbestos-related</p> <p>18 disease through the CARD screening program."</p> <p>19 Q Ms. Hillmann, have you ever seen a letter like</p> <p>20 this?</p> <p>21 A No.</p> <p>22 Q From CARD in any respect?</p> <p>23 A No.</p> <p>24 Q Has CARD ever sent to you any correspondence</p> <p>25 remotely similar to this about any of their</p>
<p style="text-align: right;">Page 75</p> <p>1 patients?</p> <p>2 A No.</p> <p>3 Q What does this letter indicate to you about the</p> <p>4 individual patient here in terms of whether or not</p> <p>5 they have a diagnosis of asbestos-related disease?</p> <p>6 MR. KAKUK: Objection, scope.</p> <p>7 MR. BECHTOLD: Foundation.</p> <p>8 BY MR. DUERK:</p> <p>9 Q Let me put it this way.</p> <p>10 If you were to see correspondence from CARD</p> <p>11 indicating that they were telling patients that</p> <p>12 that patient was eligible for social security EHH</p> <p>13 Medicare benefits even though that patient did not</p> <p>14 have a diagnosis of asbestos-related disease,</p> <p>15 would you find that troublesome?</p> <p>16 A Yes.</p> <p>17 Q Why?</p> <p>18 A Because that would be a denial. We shouldn't be</p> <p>19 putting individuals on EHH Medicare that don't</p> <p>20 have the proper diagnosis under section 1881A of</p> <p>21 the act.</p> <p>22 Q Based on all of the information that you uncovered</p> <p>23 during the course of your inquiry, did you ever</p> <p>24 see any correspondence from CARD or any e-mails,</p> <p>25 any other documentation prior to this timeframe</p>	<p style="text-align: right;">Page 76</p> <p>1 disclosing that CARD was telling patients that</p> <p>2 they were eligible for Medicare without a</p> <p>3 diagnosis of asbestos-related disease?</p> <p>4 A No.</p> <p>5 Q Would you or anyone else at the</p> <p>6 Social Security Administration based on your</p> <p>7 factual inquiry have ever written a letter like</p> <p>8 this to CARD teaching them, training them,</p> <p>9 instructing them that this practice of submitting</p> <p>10 patients for Medicare benefits without a diagnosis</p> <p>11 of ARD was appropriate, proper or authorized by</p> <p>12 the Social Security Administration?</p> <p>13 A No.</p> <p>14 Q Why not?</p> <p>15 A Because that's outside of the scope of our job.</p> <p>16 Q If we could turn to what I would like to mark as</p> <p>17 Exhibit 139, the e-mail dated at the top Friday,</p> <p>18 April 28th, 2023, that would be helpful.</p> <p>19 (WHEREUPON, Deposition Exhibit 139</p> <p>20 marked for identification by the reporter.)</p> <p>21 BY MR. DUERK:</p> <p>22 Q Ms. Hillmann, is Exhibit 139 an e-mail train that</p> <p>23 you have seen before today?</p> <p>24 A Yes.</p> <p>25 Q And is Exhibit 139 and the e-mail train here from</p>

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1 approximately the end of April 2023 and earlier
2 part of the same conversation that is related to
3 this March 21st, 2023 timeframe?
4 A Correct.
5 Q Okay. And that timeframe, I will just represent
6 to you, is it fair to say this timeframe is the
7 first information you had heard of from CARD that
8 they were submitting people to Medicare or SSA for
9 Medicare benefits under the EHH program without a
10 diagnosis?
11 A Yes.
12 Q I would like to focus on the e-mail in the
13 beginning of this train, so page 3 of Exhibit 139,
14 an e-mail from Tracy McNew dated April 12th, 2023.
15 First off, who is Tracy McNew?
16 A She is the executive director of the CARD clinic.
17 Q And who is Terra Whiteman again?
18 A Terra Whiteman is the Kalispell district manager.
19 Q Okay. And what is your understanding of how this
20 e-mail originated, if you know?
21 A I believe this particular e-mail actually
22 originated from this Exhibit 138.
23 Q Okay. So the two Exhibits 138 and 139 are tied
24 together, is that fair?
25 A Yeah.

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1 because you're telling me that CARD does not
2 consider the individual diagnosed based on
3 interpretation by a B reader, we are unable to
4 approve EHH Medicare claims involving a B reader
5 at this time, but this was a phone conversation
6 where they basically laid out that the physician
7 was completing the EHH checklist, but did not feel
8 that that person was diagnosed, so I think there
9 was some misinterpretation here from the
10 phone call with Terra to Stephanie to what was
11 relayed to Tracy.
12 Q All right. So in any event, in terms of this
13 e-mail on Exhibit 139, page 3, is this the first
14 that SSA is learning based on your factual
15 investigation of the matter that CARD is
16 apparently submitting EHH checklists based on
17 positive B reads alone?
18 A This is the first time that I'm hearing about it
19 from the original time that Terra contacted me.
20 Q And the original time that Terra contacted you
21 again was April of 2023?
22 A Correct.
23 Q And prior to that time were you aware of any
24 correspondence, any communication of any kind from
25 CARD in any way in which CARD had disclosed to the

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1 Q Okay. If you would please read this e-mail from
2 Tracy McNew to Terra Whiteman on April 12th that
3 would be helpful.
4 A Okay. "Hi Terra. My name is Tracy McNew. I am
5 the executive director of the CARD clinic. Thanks
6 for your e-mail to Stephanie Shaw about EHH
7 checklists indicating that SSA will no longer be
8 approving Medicare based on positive reads by
9 B readers."
10 Q If I could stop you right there, first of all, is
11 it true that SSA would no longer be approving
12 Medicare based on positive reads by B readers,
13 that is to say are you aware that prior to this
14 time or are you aware of whether or not SSA ever
15 had a practice of approving Medicare benefits
16 based only on positive B reads?
17 MR. KAKUK: Objection, scope. Go ahead.
18 A Again, that's outside of the scope of the realm of
19 my job. Honestly, I think this e-mail transpired
20 from a misinterpretation of what Terra was trying
21 to convey to Tracy's employee at CARD.
22 Q If you could explain, that would be helpful.
23 A Yeah. So Terra came back, and I believe it was in
24 this e-mail, and she just explained to them that
25 she conferred with the regional office, and

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1 SSA that they were engaging in this practice of
2 submitting CARD patients for Medicare benefits on
3 a B read alone prior to this period?
4 A No.
5 Q Okay. It sounds to me from the second sentence of
6 this e-mail, April 12th, 2023, Exhibit 139, that
7 Tracy McNew is saying that SSA will no longer be
8 approving Medicare based on positive reads by
9 B reads.
10 Do you see that sentence?
11 A I do see that sentence, yes.
12 Q Okay. And just so that we are clear, have you
13 seen any materials anywhere ever from CARD that
14 indicate that this was an approved practice by the
15 Social Security Administration?
16 A No.
17 Q And you seem certain of that. Why?
18 A Just because I -- I mean, we don't, again, we
19 don't go outside the realm of that EHH checklist.
20 We don't get into the B reader part of this or
21 anything that has to do with the medical
22 interpretations or anything to do with that. We
23 are not medical experts.
24 So the conversation between Terra and
25 Stephanie seems to be misconstrued here within

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1 this e-mail. Terra was trying to convey that this
 2 employee said that this physician completed the
 3 EHH checklist even though they did not agree with
 4 the diagnosis, and that to us is a denial for EHH
 5 Medicare.
 6 Q And is that because that individual patient does
 7 not have a diagnosis of asbestos-related disease?
 8 A Correct.
 9 Q Okay. Further down in this e-mail of April 12th,
 10 2023 there is another sentence that I would just
 11 like to read to you, and please tell me if I have
 12 read it correctly. Okay?
 13 A Uh-huh.
 14 Q That sentence begins about midway down this
 15 e-mail.
 16 It says, "Just to be clear, SSA has now
 17 changed its position regarding Medicare
 18 eligibility based on positive B reads, and CARD
 19 should no longer fill out EHH forms for patients
 20 with no CARD diagnosis even if they have a
 21 positive outside B read or CT read."
 22 Is that correct? Did I read that
 23 accurately?
 24 A You did.
 25 Q Okay. So now I just want to be clear.

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1 so they can address any of your concerns. I will
 2 have them reach out to you directly. Thank you."
 3 Q So is this the e-mail that clarifies that there
 4 has been no change in SSA policy?
 5 A Yes.
 6 Q Okay. When were you asked to look at these
 7 e-mails?
 8 A I believe sometime in April. I think that was
 9 whenever Terra connected with Stephanie and
 10 Stephanie had that question.
 11 Q And at any time prior to you looking at these
 12 e-mails had anyone from CARD to the best of your
 13 knowledge approached anyone at the
 14 Social Security Administration outside of what we
 15 are seeing here to ask questions about a practice
 16 of submitting B read only patients for Medicare
 17 benefits to SSA?
 18 A I mean, I can't really speak on that. I know
 19 there was continuing correspondence with Terra and
 20 then I believe the executive director and
 21 Stephanie, but I don't know if it was directly
 22 related to that.
 23 Q At any point, and I think we have covered this,
 24 but at any point to the best of your knowledge
 25 according to your factual inquiry did the

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1 Was there any change in SSA's position
 2 regarding Medicare eligibility based on positive B
 3 reads that you could find in any of your factual
 4 inquiry?
 5 MR. KAKUK: Objection, scope. Go for
 6 it.
 7 A No, and I think Terra cleared that up in her
 8 e-mail that's dated April 26th, 2023.
 9 Q Let's turn to that e-mail.
 10 A Okay.
 11 Q Are you looking at page 1 of Exhibit 139?
 12 A I believe it's page 2, correct? Yeah, page 2.
 13 Q Page 2? Okay. I am looking at an e-mail sent
 14 Wednesday, April 26th, 2023 at 2:47 PM.
 15 Am I looking at the right one?
 16 A Correct.
 17 Q Okay. If you would please read it.
 18 A "Good afternoon, Tracy. I wanted to get you an
 19 interim answer to this e-mail. I think there may
 20 be confusion. Stephanie reached out to SSA and
 21 made us aware that CARD does not consider the
 22 patients as diagnosed despite signing off on the
 23 checklist when a B reader is involved. SSA has
 24 not changed any of its rules. I am forwarding
 25 your information to our center for program support

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1 Social Security Administration ever train or teach
 2 or authorize this practice with CARD from 2010 at
 3 any time?
 4 A No.
 5 Q The way that we got into this line of questioning
 6 initially during your deposition today, I want to
 7 try to return to that point. If I remember
 8 correctly, we were walking through the different
 9 paragraphs that you were asked to respond to in
 10 the subpoena.
 11 Do you recall that part of your testimony?
 12 A Yes.
 13 Q Okay. I would like to return to that part of the
 14 inquiry, but before we leave off here, when this
 15 topic first came up, you used the word "fraud."
 16 Do you recall that?
 17 A Yes.
 18 Q What was your meaning?
 19 What were you describing when you used that
 20 word?
 21 A Fraud means you are completing a form like to me
 22 it would be illegally, and you're signing off on a
 23 diagnosis that you don't believe this person is
 24 diagnosed so they can get onto Medicare benefits,
 25 so that to me is a clear indication of fraud.

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1 Q And when you reviewed this e-mail train in
2 Exhibits 138 and 139 about CARD's practices of
3 submitting patients without a diagnosis for
4 Medicare benefits, did you have concerns that this
5 was fraudulent?
6 MR. KAKUK: Objection, scope.
7 A I did have concerns, but now that it was on our
8 radar, we did make it clear to them that if they
9 were completing any checklists that they didn't
10 agree that person had a diagnosis that we would be
11 denying them and that they need to make us aware
12 of that.
13 Q And when you asked for CARD to make you aware of
14 any of those cases, did CARD disclose to you how
15 many cases they have done this in, for how many
16 individual CARD patients?
17 A I didn't directly talk to CARD, but Terra relayed
18 that information, and to my knowledge there was no
19 such reply.
20 Q Okay. So to the best of your knowledge based on
21 your factual inquiry as you sit here today as far
22 as you are aware there are two patients whose EHH
23 forms were submitted when CARD knew that patient
24 did not have an ARD diagnosis?
25 A Correct.

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1 employees or technicians do not get into the
2 specifics of the medical condition listed on the
3 EHH checklist.
4 Q In terms of paragraph 22, when a B reader
5 qualified physician determines a patient has
6 pleural thickening or pleural plaques by
7 interpretation of plain chest x-ray or computed
8 tomographic radiograph of the chest, SSA staff
9 doesn't wade into those facts to determine whether
10 or not what SSA is being told by CARD qualifies as
11 a diagnosis or not.
12 That's left up to the CARD physician to
13 state on the EHH form, is that fair?
14 A Correct.
15 Q Okay. Turning to paragraph 25, I will read it and
16 please tell me if I have read it correctly.
17 "The Social Security Administration's
18 designated deponent must testify why the
19 Social Security Administration gave an award to
20 CARD for CARD's exemplary cooperation with the
21 Social Security Administration in implementing the
22 amendments enacted by the Affordable Care Act."
23 I think we have heard some of your
24 testimony here. Do you have anything more to
25 offer on that topic?

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1 Q Okay. And you are aware of no more than just
2 those two patients from the spring of 2023?
3 A Correct.
4 Q At any time has CARD disclosed to you how many
5 patients actually fell into this category or fall
6 into this category?
7 A I've had no direct correspondence with CARD and I
8 don't believe that to my knowledge, and I have
9 asked Terra, that they have reported anybody
10 outside of those two beneficiaries.
11 Q Those two beneficiaries from the spring of 2023?
12 A Correct.
13 Q Okay. Back to the subpoena, again, I am looking
14 at what has been marked as Exhibit 135. I think
15 we made it to paragraph 22.
16 A Okay.
17 Q And just so that I'm clear, once you've had a
18 chance to review paragraph 22, is there anything
19 else that comes to mind that you have to offer in
20 response to paragraph 22 that we haven't talked
21 about today?
22 A So on paragraph 22, again, step 1 is completed by
23 social security, and then CARD is to complete
24 step 2 and step 3 following section 1881A of the
25 act. As far as the specifics, social security

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1 A I do not.
2 Q Okay. So to the best of your knowledge based on
3 your factual inquiry, did you see evidence that
4 the Social Security Administration gave an award
5 to CARD for CARD's exemplary cooperation with the
6 SSA in implementing the amendments enacted by the
7 Affordable Care Act?
8 A I did not, but as I previously mentioned, there
9 could have been a regional award. Our Regional
10 Commissioner Mary Lisa Lewandowski did mention
11 that there was a potential that a regional
12 commissioner award was given out.
13 Q Okay.
14 A But she had no record of it.
15 Q All right. And you communicated with
16 Mary Lewandowski about that?
17 A Correct.
18 Q Okay. Paragraph 26.
19 "The Social Security Administration's
20 designated deponent must testify why the
21 Social Security Administration has designated to
22 CARD the task of filling out environmental health
23 hazards checklists."
24 What response do you have?
25 A Well, I think that, you know, again, this aligns

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1 with section 1881A of the act. The physicians are
2 completing these checklists and, you know,
3 following the guidelines of that act in order for
4 these beneficiaries to be put on EHH Medicare. If
5 they're not diagnosed with one of those
6 conditions, then they will not be put on EHH
7 Medicare.

8 Q And in terms of a physician's determination,
9 again, with the diagnosis, it's the physician at
10 CARD who fills out the EHH form, is that right?

11 A Correct.

12 Q And is SSA relying on the provider or the CARD
13 physician to communicate whether there is a
14 diagnosis of asbestos-related disease or not to
15 SSA?

16 A Correct.

17 MR. KAKUK: Objection, scope.

18 A Sorry. Correct.

19 Q Anything else to offer on paragraph 26 aside from
20 what's already been covered?

21 A No.

22 Q Okay. Paragraph 27.

23 "Because CARD physicians actually see
24 patients in a clinical setting, CARD physicians
25 make clinical diagnoses of the patients prior to

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1 A Again, this would be outside the expertise of our
2 position as technicians and as a Medicare lead.

3 Q All right. In your mind based on your review of
4 the facts is the answer to this question better
5 left to the CARD clinicians?

6 A Correct.

7 Q Okay. Paragraph 28.

8 "Many patients whom CARD physicians have
9 not clinically diagnosed with asbestos-related
10 disease are found to have positive interpretations
11 of chest x-rays for asbestosis or pleural plaques,
12 pleural thickening by B reader qualified
13 physicians or positive interpretation of CT scans
14 for asbestosis or pleural plaques or pleural
15 thickening by other qualified physicians."

16 "Based on these outside interpretations,
17 CARD fills out environmental health hazard
18 checklists for these patients, a CARD physician
19 signs the checklist, and CARD submits the
20 checklist to SSA."

21 Did I read that correctly?

22 A Yes.

23 Q The question, is this the proper course of action
24 for CARD for these patients, did I read that
25 correctly?

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1 filling out environmental health hazards
2 checklists for them. Meanwhile, B readers who
3 interpret chest x-rays and outside readers who
4 interpret CT scans do not make clinical diagnoses
5 because they never see the patients in a clinical
6 setting, but rather make interpretations of x-rays
7 and CT scans."

8 First, did I read that correctly?

9 A Yes.

10 Q Okay. In terms of your factual review of all the
11 information and material that was available to you
12 from SSA, do you have any comment on the first
13 part of paragraph 27 or is this something that
14 only a physician would know?

15 A I believe only a physician would know.

16 Q All right. The second part of paragraph 27.

17 "Do the positive interpretations of these
18 non-CARD physicians qualify as diagnoses for
19 purposes of the environmental health hazards
20 checklists even though they are not clinical
21 diagnosis."

22 The same questions. Is this information
23 information that you are able to obtain through
24 your factual review of the file, interviews with
25 SSA employees or any other sources?

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1 A You did.

2 Q In terms of the first part of response for
3 paragraph 28, is information about CARD physicians
4 clinically diagnosing patients compared to
5 B readers interpreting CTs and x-rays, is that
6 anything that is within your purview as an SSA
7 employee?

8 A No.

9 Q Do you have any response to paragraph 28 other
10 than what you just said or what we've been
11 discussing today?

12 A No.

13 Q Okay. Paragraph 29.

14 "Does the EHH checklist form referenced in
15 SSA POMS section HI 00803.001 and .050 indicate
16 that step 2 of the form is to be completed by a
17 healthcare provider who will identify the
18 asbestos-related conditions and its date of
19 diagnosis."

20 Other than shortening those policy
21 sections, did I read this correctly?

22 A Yes.

23 Q Have you addressed this topic already in your
24 testimony?

25 A I believe so.

<p style="text-align: right;">Page 93</p> <p>1 Q Is there anything else that needs to be covered</p> <p>2 here in your view?</p> <p>3 A No.</p> <p>4 Q Turning to paragraph 36 of the subpoena.</p> <p>5 "Has anyone at CARD informed the SSA field</p> <p>6 office in Kalispell that CARD patients do not need</p> <p>7 to have a diagnosis of asbestos-related disease in</p> <p>8 order to qualify for federal benefits."</p> <p>9 Did I read that correctly?</p> <p>10 A Yes.</p> <p>11 Q Aside from these e-mails from the timeframe of</p> <p>12 March and April of 2023 which we have covered, has</p> <p>13 anyone at CARD informed the SSA field office in</p> <p>14 Kalispell that CARD patients do not need to have a</p> <p>15 diagnosis of asbestos-related disease in order to</p> <p>16 qualify for federal benefits?</p> <p>17 A No.</p> <p>18 Q Anything else on that topic?</p> <p>19 A No.</p> <p>20 Q Response 37. "Has any employee at the SSA field</p> <p>21 office in Kalispell instructed CARD that patients</p> <p>22 do not need to have a diagnosis of</p> <p>23 asbestos-related disease in order to qualify for</p> <p>24 federal benefits."</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">Page 94</p> <p>1 A You did.</p> <p>2 Q And what is the answer?</p> <p>3 A With my correspondence with manager</p> <p>4 Terra Whiteman, we have never instructed CARD on</p> <p>5 how to complete an EHH checklist or go over the</p> <p>6 medical factors that are involved. It's outside</p> <p>7 of our purview.</p> <p>8 Q All right. And based on what you've learned from</p> <p>9 Terra Whiteman about her response to this B read</p> <p>10 only program, have you ever seen anything from</p> <p>11 Terra Whiteman that would indicate to you that she</p> <p>12 would have instructed CARD that patients do not</p> <p>13 need to have a diagnosis of asbestos-related</p> <p>14 disease in order to qualify for federal benefits?</p> <p>15 A No.</p> <p>16 Q And why not?</p> <p>17 MR. KAKUK: Objection, scope.</p> <p>18 A There is no record of that, and that's not within</p> <p>19 policy. There would be no reason for her to</p> <p>20 instruct her technicians on what a qualified</p> <p>21 physician does by following section 1881A of the</p> <p>22 act as it's outside the purview of our positions.</p> <p>23 Q All right. Paragraph 28, and I will just ask the</p> <p>24 question. Has any employee at the SSA field</p> <p>25 office in Kalispell instructed anyone that CARD</p>
<p style="text-align: right;">Page 95</p> <p>1 patients qualify for Medicare benefits on a B read</p> <p>2 chest x-ray interpretation of a lung abnormality</p> <p>3 unrelated to asbestos exposure and without a</p> <p>4 diagnosis of asbestos-related disease?</p> <p>5 A No.</p> <p>6 Q Paragraph 39. Has anyone at CARD informed the SSA</p> <p>7 that it has submitted in excess of 100 EHH forms</p> <p>8 signed by Dr. Black to the</p> <p>9 Social Security Administration field office in</p> <p>10 Kalispell on behalf of CARD patients when CARD had</p> <p>11 actual knowledge that those patients had not been</p> <p>12 diagnosed with asbestos-related disease?</p> <p>13 A This my first time seeing this, I think, besides</p> <p>14 reading the subpoena. Hold on. To my knowledge,</p> <p>15 no.</p> <p>16 Q Earlier I asked about whether or not CARD had</p> <p>17 disclosed certain facts to the</p> <p>18 Social Security Administration about the B read</p> <p>19 only program or about the topic of submitting</p> <p>20 undiagnosed patients to the SSA field office for</p> <p>21 Medicare benefits without asbestos-related disease</p> <p>22 diagnoses.</p> <p>23 Do you recall that line of questions?</p> <p>24 A Yes.</p> <p>25 (WHEREUPON, Deposition Exhibit 137</p>	<p style="text-align: right;">Page 96</p> <p>1 marked for identification by the reporter.)</p> <p>2 BY MR. DUERK:</p> <p>3 Q Okay. I would like to show you now what I am</p> <p>4 marking as Exhibit 137, tab 8 in your book.</p> <p>5 Do you see Exhibit 137 in front of you?</p> <p>6 A Yes.</p> <p>7 Q I will represent to you that this document,</p> <p>8 document 110, has been filed in federal court in</p> <p>9 front of the trial judge in this matter.</p> <p>10 A Okay.</p> <p>11 Q I will also represent to you that there are</p> <p>12 several statements of fact here that are</p> <p>13 undisputed by the CARD clinic.</p> <p>14 A Okay.</p> <p>15 Q I would like to read these to you, and my question</p> <p>16 is this.</p> <p>17 During your factual investigation and</p> <p>18 inquiry did you see any documents or obtain any</p> <p>19 statements from any witnesses or learn any</p> <p>20 information that indicated that CARD had submitted</p> <p>21 these statements to the SSA at any time from 2010</p> <p>22 until the spring of 2023?</p> <p>23 A No.</p> <p>24 Q Okay. So what I want to do is go through them</p> <p>25 statement by statement.</p>

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1	A Okay.	1	Q The next statement.
2	Q So the first one, I will read it, and please tell	2	"CARD continues its practice of submitting
3	me if I have read it correctly.	3	patients EHH forms to Social Security
4	"CARD has submitted EHH forms to the	4	Administration who do not have a diagnosis of
5	Social Security Administration when CARD providers	5	asbestos-related disease. Undisputed."
6	were aware that the individual patient did not	6	Prior to the spring of 2023 based on your
7	have a clinical diagnosis of asbestos-related	7	factual inquiry did you ever see that CARD
8	disease. Undisputed."	8	submitted this statement to the SSA?
9	Ms. Hillmann, to the best of your knowledge	9	A No.
10	based on your factual inquiry, did you see any	10	Q The next statement.
11	evidence that CARD prior to March and April of	11	"CARD has submitted patients without a
12	2023 had ever submitted any kind of statement like	12	diagnosis of asbestos-related disease to the
13	this to the social security administration?	13	Social Security Administration for Medicare
14	A No.	14	benefits since at least 2013 and presumably since
15	Q The next statement. "Dr. Black, Tanis Hernandez	15	the Affordable Care Act was passed in 2010.
16	and Tracy McNew knew about CARD's practice of	16	Undisputed."
17	submitting patient EHH forms for Medicare benefits	17	The same question. Ms. Hillmann, at any
18	to social security for patients who did not have a	18	time prior to the spring of 2023 did you see that
19	diagnosis of asbestos-related disease. Undisputed	19	CARD had submitted any statements like this to the
20	that this is Ms. Hernandez's testimony."	20	Social Security Administration for any purpose,
21	Prior to the spring of 2023 or at any time,	21	for guidance, for response, for training, for any
22	frankly, based on your factual inquiry did you	22	reason?
23	come across information that CARD had submitted a	23	A No.
24	statement like this for SSA to consider?	24	Q The next statement.
25	A Prior to the spring of 2023, no.	25	"CARD submitted an EHH form on multiple
Page 99		Page 100	
1	patients' cases based on a B read alone when	1	Social Security Administration in support of
2	CARD's current medical director knew those	2	Medicare benefits for patients who had no clinical
3	patients did not have an asbestos-related disease	3	diagnosis of asbestos-related disease.
4	diagnosis." Response, undisputed.	4	Undisputed."
5	Did I read that correctly?	5	Did I read that correctly with the changes
6	A Yeah.	6	indicated here?
7	Q The same question, Ms. Hillmann.	7	A Yes.
8	At any point to your knowledge did CARD	8	Q Prior to the spring of 2023, did CARD ever come
9	submit this statement to the Social Security	9	forward to the Social Security Administration
10	Administration?	10	telling the Social Security Administration that
11	A No.	11	they planned to do something like this?
12	Q The next statement.	12	A No.
13	"CARD's medical director testified multiple	13	Q "CARD has been signing EHH forms for patients
14	patients' EHH forms were submitted to the Social	14	without a clinical diagnosis since the federal
15	Security Administration for Medicare benefits even	15	grant started."
16	though they did not have a CARD diagnosis of	16	Did I read that correctly?
17	asbestos-related disease." Response, undisputed.	17	A Yes.
18	Ms. Hillmann, the same question.	18	Q The response, undisputed.
19	At any time prior to the spring of 2023 did	19	Did I read that correctly?
20	you come across any information indicating that	20	A Yeah.
21	CARD had come forward with this statement to the	21	Q During your factual investigation into this matter
22	Social Security Administration?	22	did you come across any evidence that CARD had
23	A No.	23	ever shared anything remotely like any of these
24	Q The next statement.	24	statements, including the one I just read, to the
25	"CARD knowingly submitted EHH forms to the	25	Social Security Administration?

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<p>1 A Prior to April of 2023, no.</p> <p>2 Q I'd like to take a short break.</p> <p>3 THE VIDEOGRAPHER: The time is 2:13. We</p> <p>4 are off the record.</p> <p>5 (Break taken.)</p> <p>6 THE VIDEOGRAPHER: The time is 2:34. We</p> <p>7 are back on the record.</p> <p>8 BY MR. DUERK:</p> <p>9 Q All right. After a short break, I am looking at</p> <p>10 the subpoena for trial testimony and all of the</p> <p>11 topics and paragraphs that we have attempted to</p> <p>12 cover today from paragraphs 17 to 22, paragraphs</p> <p>13 25 to 29 and paragraphs 36 to 39.</p> <p>14 Ms. Hillmann, have we now covered your</p> <p>15 responses to each of the paragraphs as set forth</p> <p>16 in the subpoena to the SSA?</p> <p>17 A Yes.</p> <p>18 Q Okay. I've got a few clarifications, but in terms</p> <p>19 of any substantive response in terms of the topics</p> <p>20 covered in the subpoena to the SSA, have we now</p> <p>21 essentially covered any response that you might</p> <p>22 have based on your factual review of the evidence</p> <p>23 and the underlying records that you examined in</p> <p>24 your inquiry?</p> <p>25 A Yes.</p>	<p>1 (WHEREUPON, Deposition Exhibit 140</p> <p>2 marked for identification by the reporter.)</p> <p>3 (WHEREUPON, Deposition Exhibit 141</p> <p>4 marked for identification by the reporter.)</p> <p>5 BY MR. DUERK:</p> <p>6 Q Okay. So just a couple of clarifications. I want</p> <p>7 to put in front of you what I have marked or what</p> <p>8 the court reporter has marked as Exhibit 140 and</p> <p>9 141.</p> <p>10 I will represent to you that each of these</p> <p>11 exhibits represent the updated POMS for the</p> <p>12 sections that we have been covering during your</p> <p>13 testimony today.</p> <p>14 Is that an accurate characterization in</p> <p>15 your mind?</p> <p>16 A Yes.</p> <p>17 Q Okay. Let's start with Exhibit 140. This is</p> <p>18 essentially the same POMS as Exhibit 75, POMS</p> <p>19 008031.001, Hospital Insurance Entitlement for</p> <p>20 Individuals Exposed to Environmental Health</p> <p>21 Hazards.</p> <p>22 Is that fair?</p> <p>23 A Yes.</p> <p>24 Q Okay. Based on your review of the earlier POMS</p> <p>25 published in Exhibit 75, is the same POMS section</p>
Page 103	Page 104
<p>1 in Exhibit 140 different in any material way that</p> <p>2 you see?</p> <p>3 MR. KAKUK: Objection, scope. Go ahead.</p> <p>4 MR. BECHTOLD: Objection, foundation.</p> <p>5 BY MR. DUERK:</p> <p>6 Q First of all, have you had a chance to look at</p> <p>7 each of these?</p> <p>8 A I looked at 141, but I haven't fully looked at</p> <p>9 140, but I am assuming that it was due to the</p> <p>10 pronoun changes that we made.</p> <p>11 Q Okay.</p> <p>12 A Yeah, that was part of that change.</p> <p>13 Q And again, I am not asking for any substantive</p> <p>14 policy differences that may be included here.</p> <p>15 A Okay.</p> <p>16 Q In fact, my question is geared towards showing the</p> <p>17 opposite to be true, if it is.</p> <p>18 A Yeah.</p> <p>19 Q Did you notice anything aside from pronoun changes</p> <p>20 or other grammatic changes that are apparent from</p> <p>21 the print in front of you?</p> <p>22 A No.</p> <p>23 Q The same question related to the other POMS</p> <p>24 section from Exhibit 76, POMS section 00803.050,</p> <p>25 Developing Medical Requirement for Entitlement to</p>	<p>1 EHH Medicare.</p> <p>2 Do you see any changes in the new version</p> <p>3 that jump out at you other than pronoun changes?</p> <p>4 MR. KAKUK: The same objection.</p> <p>5 A No.</p> <p>6 Q Okay.</p> <p>7 MR. BECHTOLD: Foundation.</p> <p>8 BY MR. DUERK:</p> <p>9 Q All right. There were some questions about this</p> <p>10 timeframe from March 21st, 2023 and then the</p> <p>11 e-mails that we examined from the April 2023</p> <p>12 timeframe.</p> <p>13 What can you tell us about the difference</p> <p>14 between the March dates and the April dates and</p> <p>15 why is there a disconnect in that timeframe?</p> <p>16 A The timeframe between the e-mails?</p> <p>17 Q Not necessarily the timeframe between the e-mails,</p> <p>18 but the timeframe, the period of time between</p> <p>19 March 21st and those e-mails.</p> <p>20 A Well, I mean, I believe that's when the</p> <p>21 correspondence started, but based on -- I might</p> <p>22 have been incorrect about the date, but based on</p> <p>23 these e-mails, basically this is just one string</p> <p>24 of e-mails that I have been continuing to get from</p> <p>25 Terra regarding her correspondence with CARD.</p>

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1 Q Okay.

2 A Yeah.

3 Q And in terms of where things left off with this

4 e-mail train, based on your last review of

5 e-mails, have we now looked at all of the e-mails

6 on this topic that you had access to to the best

7 of your recollection?

8 A To the best of my recollection. There might be

9 additional ones that, you know, CARD had sent from

10 this date just kind of expanding on an earlier

11 e-mail, but to my recollection I believe this is,

12 you know, the majority of the question.

13 Q Okay.

14 A Yeah.

15 Q And in terms of the initiation or how this

16 question first came to light, is it your

17 understanding that it came to light because of

18 phone communication, not e-mail communication?

19 A Correct.

20 Q Okay. And might that in part explain the little

21 bit of time connect between March 21st, 2023 and

22 the e-mails that we see in April?

23 A Yes.

24 Q Okay. The last thing that I'd like to cover is

25 you submitted a declaration in this case, is that

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1 MR. KAKUK: Objection, scope.

2 A Yes.

3 BY MR. DUERK:

4 Q Ms. Hillmann, it has appeared to me that during

5 your deposition where you have needed

6 clarification in some of my questions rather than

7 just guessing at my meaning you have asked for

8 that clarification in order to provide clearer

9 answers.

10 Has that been your impression as well?

11 A Yes.

12 Q I thank you for your time today. I don't have any

13 more questions at this moment. I am sure I will

14 have some follow-up questions after Mr. Bechtold

15 begins.

16 A Okay.

17 MR. DUERK: For just a moment though, I

18 would like to make a record. I don't know if I

19 need to do it on video or not. I guess we can

20 redact it in this way.

21 I'd just like to note that in terms of

22 the exhibits related to the e-mails today,

23 Exhibits 138 and 139, this is the first time

24 that I have seen these e-mails and any

25 attachments.

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1 correct?

2 A Yes.

3 (WHEREUPON, Deposition Exhibit 136

4 marked for identification by the reporter.)

5 BY MR. DUERK:

6 Q And that declaration is at tab 2, and I will ask

7 that we mark this declaration as Exhibit 136.

8 Do you see Exhibit 136 in front of you?

9 A Yes.

10 Q Ms. Hillmann, is this your declaration?

11 A Yes.

12 Q And if you would take a look through it, I believe

13 we have covered the topics outlined in this

14 declaration.

15 Is that your understanding also?

16 A Correct.

17 Q Okay. There is one specific section here that I'd

18 like you to focus on. Do you see paragraph 7?

19 A Yes.

20 Q Okay. Is it still true that POMS section

21 HI 00803000, et sec, meaning the entire section or

22 those that follow, those sections titled Medicare

23 entitlement for individuals exposed to

24 environmental health hazards (EHH) are based on

25 and mirror language from the Affordable Care Act?

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1 I do appreciate their disclosure today.

2 However, I am also aware that there are

3 approximately 2,500 e-mails that counsel for the

4 CARD clinic received yesterday that I have not

5 received. I don't know what the topic of those

6 e-mails is.

7 I don't know what they are about, who

8 authored them, what the nature of those e-mails

9 are. In essence, I'm surprised.

10 I believe that I have had discovery

11 pending now for several years with an obligation

12 to replenish discovery related to any and all

13 communications between CARD and the Social

14 Security Administration, those discovery

15 requests having been propounded on CARD.

16 I would like to note that for the record

17 that this is a surprise. I have done as best I

18 could, given the circumstances, and I am content

19 with the record that I have developed. However,

20 I am not in favor of being surprised with any

21 new correspondence or any other new discovery at

22 this trial preservation deposition for

23 Ms. Hillmann.

24 And to that extent I will object to

25 non-disclosure to any exhibits or materials that

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1	I haven't seen before right now if Ms. Hillmann	1	A Correct.
2	is asked to respond to those materials.	2	Q And your responses today are the official position
3	I just wanted to perfect that objection	3	of the SSA, correct?
4	for the record. With that, I think this portion	4	A Correct.
5	of the video, I would imagine, would be redacted	5	Q So we are getting your testimony today for your
6	out, so I tender the witness.	6	convenience and capturing your testimony on video
7	MR. BECHTOLD: Well, let's just take a	7	to present to the jury at trial because the Social
8	break, and we'll do a switcheroo.	8	Security Administration has represented that you
9	MR. DUERK: Sounds good.	9	are not going to be available for trial, is that
10	THE VIDEOGRAPHER: The time is 2:46. We	10	right?
11	are off the record.	11	A To my knowledge, yes.
12	(Break taken.)	12	Q Earlier you testified that you had reviewed the
13	THE VIDEOGRAPHER: The time is 2:54. We	13	POMS HI 803.001 and 803.050, the e-mails, and
14	are back on the record.	14	those are the POMS dealing with the application of
15	EXAMINATION	15	the section of the act, section 1881A, correct?
16	BY MR. BECHTOLD:	16	A Correct.
17	Q Ms. Hillmann, my name is Tim Bechtold, and I	17	Q And they are the Social Security Administration's
18	represent the Center for Asbestos Related Disease	18	internal regulations regarding the application of
19	in this lawsuit.	19	the act?
20	And just to follow-up, so you have been	20	MR. KAKUK: Objection, scope. Go for
21	designated by the Social Security Administration	21	it.
22	as the person with knowledge to provide responses	22	A They are our instructions for technicians to
23	on behalf of the SSA, is that right?	23	process these claims.
24	A Correct.	24	Q All right. And I think as you testified, both
25	Q And so you speak on behalf of the SSA, correct?	25	Exhibit 75 and 76 have been superceded, correct?
Page 111		Page 112	
1	A I need to find 75 and 76. Okay. These are the	1	A Yes, I did. I contacted headquarters, I contacted
2	different policies. Yes. Correct.	2	our regional commissioner, I contacted the
3	Q And so as of October of 2022, Exhibit 75 and	3	district manager in Kalispell, and I contacted my
4	Exhibit 76 are no longer valid, correct?	4	former counterpart that used to be the Medicare
5	MR. KAKUK: Objection, scope.	5	lead prior to 2018.
6	A They have been updated. That doesn't mean they	6	Q Okay. And the people who were active in Libby for
7	are not valid.	7	the Social Security Administration in 2011, you
8	Q Okay. Excuse me. They have been superceded?	8	contacted them as well, correct?
9	A Superceded with the same policy. The only change	9	A That is who that was. So that would be
10	is in pronouns.	10	Mary Lisa Lewandowski, that would be Kathy Suarez,
11	Q Okay. Ms. Hillmann, I am going to hand you	11	previously Suarez, now Will.
12	Exhibit 332.	12	Q And I think you testified that you reviewed
13	A Okay.	13	e-mails between the Social Security Administration
14	Q Could you take a look at that document?	14	and CARD, is that right?
15	A It's this document that I haven't seen.	15	A The e-mails from the spring 2023. There were no
16	MR. DUERK: Object, non-disclosure. Go	16	prior e-mails for me to review. The only e-mails
17	ahead.	17	prior to that were from headquarters to our
18	BY MR. BECHTOLD:	18	regional office on just the training and the
19	Q So as I understand it, you have never seen	19	policies.
20	Exhibit 332 before?	20	Q So I take it obviously the e-mail exists. You
21	A I have not. It was a part of your attached	21	just didn't look at it, is that right?
22	e-mail, but I was never sent this attachment.	22	A This e-mail? I was never given this e-mail.
23	Q And as part of your preparation for your	23	Q Why weren't you given that e-mail?
24	deposition today did you contact any of the people	24	A I was not even made aware of this e-mail.
25	who work for the Social Security Administration?	25	Q Did you ask Mary Lisa Lewandowski about the

<p style="text-align: right;">Page 113</p> <p>1 contact she had with CARD while she was in Libby?</p> <p>2 A I asked for all correspondence.</p> <p>3 Q Who did you ask for all correspondence from?</p> <p>4 A All the people that I previously just gave to you</p> <p>5 in my last question.</p> <p>6 Q All right. So you did ask Mary Lisa Lewandowski</p> <p>7 for all correspondence she had with CARD, and she</p> <p>8 did not provide it to you, is that right?</p> <p>9 A Well, I would not know if she just forgot about</p> <p>10 this e-mail or didn't have this e-mail anymore</p> <p>11 because our records, our e-mail records actually</p> <p>12 drop off after seven years, so they are no longer</p> <p>13 available, so she might not have kept it.</p> <p>14 Q Okay. Could you take a look at Exhibit 332?</p> <p>15 A Uh-huh.</p> <p>16 MR. KAKUK: Mr. Bechtold, is this</p> <p>17 somewhere in the record for me to look at as</p> <p>18 well?</p> <p>19 MR. BECHTOLD: Sure. It's Exhibit 332.</p> <p>20 MR. KAKUK: In the trial exhibits?</p> <p>21 Okay.</p> <p>22 Q So your testimony is you have never seen this</p> <p>23 before?</p> <p>24 A No.</p> <p>25 Q Okay. Would you look to the second page of</p>	<p style="text-align: right;">Page 114</p> <p>1 Exhibit 332. Can you tell me what that is?</p> <p>2 A This is the environmental health hazards</p> <p>3 checklist, the EHH checklist.</p> <p>4 Q Is this the EHH checklist that has been in use</p> <p>5 since May 20th of 2010 until the present?</p> <p>6 A I would have to look at the actual policy. There</p> <p>7 has been policy changes in HI 00803.50 and the</p> <p>8 most recent one was done in October.</p> <p>9 Q Sure. Take a look at it.</p> <p>10 A Okay.</p> <p>11 Q That's at page 2 of Exhibit 141.</p> <p>12 A I got it. What was the date on this one?</p> <p>13 Q The e-mail date is May 20th of 2010.</p> <p>14 A Okay. It appears to be the same checklist.</p> <p>15 Q And if you look at Exhibit Number 75.</p> <p>16 A Is that in tab 4?</p> <p>17 Q Excuse me. Exhibit 73, and look at page 4.</p> <p>18 A Exhibit 73? Can you tell me what tab that is?</p> <p>19 Q It's tab 3.</p> <p>20 A Okay. Do you want me to check the checklist with</p> <p>21 that one too? It appears to be the same one.</p> <p>22 Q So from the e-mail that Mary Lisa Lewandowski sent</p> <p>23 to Tanis Hernandez on May 20th, 2010 with that</p> <p>24 environmental health hazards checklist attached to</p> <p>25 it, it's the same version of the environmental</p>
<p style="text-align: right;">Page 115</p> <p>1 health hazards checklist as Exhibit 76 and</p> <p>2 Exhibit 141, correct?</p> <p>3 A It appears to be that way. It does look like</p> <p>4 there is one change.</p> <p>5 Q What is the change?</p> <p>6 A I've just got to make sure. The actual minimum</p> <p>7 medical evidence required under malignancy of the</p> <p>8 lung. It just added the bronchoscopy report.</p> <p>9 Q Which version are you looking at?</p> <p>10 A I am looking at this version, and I am also</p> <p>11 looking at this version. So from this version to</p> <p>12 this version. In this version it's different.</p> <p>13 Q Okay.</p> <p>14 A It added on the bronchoscopy report.</p> <p>15 Q So instead of saying "this" let's identify them by</p> <p>16 number.</p> <p>17 A Okay.</p> <p>18 Q The document you are referring to now is?</p> <p>19 A Exhibit 332.</p> <p>20 Q Okay. And 332?</p> <p>21 A 332.</p> <p>22 Q Then the next document that you looked at would be</p> <p>23 Exhibit 76. So 332 is different from 76?</p> <p>24 A And 332 is different than Exhibit 141.</p> <p>25 Q Okay. Great. So the Social Security</p>	<p style="text-align: right;">Page 116</p> <p>1 Administration developed this EHH checklist,</p> <p>2 correct?</p> <p>3 MR. KAKUK: Objection, scope. Go for</p> <p>4 it.</p> <p>5 A I believe so. I mean, I can't -- you know, to be</p> <p>6 honest, I know that CARD originally had the FLAME,</p> <p>7 I believe it was the FLAME and the LAMP2 benefits,</p> <p>8 and they had a questionnaire and that -- you know,</p> <p>9 essentially they used that questionnaire, but then</p> <p>10 we moved from the Affordable Care Act to the</p> <p>11 section 1881A act. I believe social security put</p> <p>12 this together to make sure that the physicians</p> <p>13 were following the guidelines of section 1881A of</p> <p>14 the act.</p> <p>15 Q So as I understand your testimony, the Social</p> <p>16 Security Administration put together the language</p> <p>17 of this EHH checklist to make sure that the</p> <p>18 physicians involved in step 2 were following the</p> <p>19 provisions of section 1881A of the act?</p> <p>20 A Correct.</p> <p>21 MR. KAKUK: The same objection.</p> <p>22 A Correct.</p> <p>23 Q And your testimony is the reason they included</p> <p>24 this language is to have it mirror the act,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 117</p> <p>1 MR. KAKUK: The same objection.</p> <p>2 A Did I say that previously? I guess I said that in</p> <p>3 my deposition.</p> <p>4 Q Your declaration?</p> <p>5 A Declaration, yes.</p> <p>6 Q Okay. So that's what you testified in your</p> <p>7 declaration?</p> <p>8 A Yes.</p> <p>9 Q So did any Social Security Administration employee</p> <p>10 provide any guidance at all to any CARD employee</p> <p>11 on how to fill out an EHH checklist?</p> <p>12 A No. That is outside the realm of our job. We are</p> <p>13 not medical experts.</p> <p>14 Q How many EHH checklists have come to the Social</p> <p>15 Security Administration that were not from CARD?</p> <p>16 A I would not know that off the top of my head. I</p> <p>17 would have to -- that would take some time to</p> <p>18 research, but there are outside physicians that do</p> <p>19 fill these out besides the CARD clinic.</p> <p>20 Q Would you agree that the CARD clinic does the vast</p> <p>21 majority of them?</p> <p>22 A To to my knowledge, they do, but again I would</p> <p>23 have to research that to get the numbers, and that</p> <p>24 would take some time.</p> <p>25 Q Did the Social Security Administration ever give</p>	<p style="text-align: right;">Page 118</p> <p>1 Exhibit 75 or Exhibit 76 to CARD?</p> <p>2 A To my knowledge, well, Exhibit 332 clearly shows</p> <p>3 Mary Lisa must have given it to them.</p> <p>4 Q It looks like that's just the EHH checklist,</p> <p>5 correct?</p> <p>6 A That's what you're referring to, not the actual</p> <p>7 policy, or are you talking about the actual</p> <p>8 policy?</p> <p>9 Q I am talking about the policy.</p> <p>10 A Well, I don't know why we would give them the</p> <p>11 policy. It's our instructions. It's our internal</p> <p>12 instructions.</p> <p>13 Q Okay.</p> <p>14 A Yeah.</p> <p>15 Q So those instructions are meant for the Social</p> <p>16 Security Administration only, correct?</p> <p>17 A Those instructions are meant for our technicians</p> <p>18 only to process claims.</p> <p>19 Q They're not meant for CARD?</p> <p>20 A No, they're not.</p> <p>21 Q They are not meant for anyone outside of Social</p> <p>22 Security Administration?</p> <p>23 A They can access it on our policy -- you know,</p> <p>24 policy publications on the SSA.gov website, but I</p> <p>25 mean I don't know why they would. It's our</p>
<p style="text-align: right;">Page 119</p> <p>1 technician instructions.</p> <p>2 Q Sure. And so the SSA sent staff to Libby after</p> <p>3 the Affordable Care Act was passed, right?</p> <p>4 A Correct.</p> <p>5 Q And they set up shop in Libby?</p> <p>6 A Set up shop? They trained our technicians within</p> <p>7 the Kalispell office, yes.</p> <p>8 Q And so what did they do in Libby?</p> <p>9 A They took claims and they trained our SSA</p> <p>10 employees in the Kalispell office.</p> <p>11 Q When you say took claims, what does that mean?</p> <p>12 A That means they took in Medicare claims.</p> <p>13 Q What did they do?</p> <p>14 A They processed Medicare claims, so they followed</p> <p>15 the instructions within the policy and processed</p> <p>16 any Medicare claims that they had at the time.</p> <p>17 Q So as a practical matter, they sat down in a chair</p> <p>18 and did what?</p> <p>19 A They followed these instructions, so they would</p> <p>20 follow -- if you go to HI 00803.50 they are</p> <p>21 following the step-by-step instructions to make</p> <p>22 sure that they could process this claim correctly.</p> <p>23 Q Okay. So did people from Libby walk into their</p> <p>24 office and sit down and say, hi, my name is</p> <p>25 patient one?</p>	<p style="text-align: right;">Page 120</p> <p>1 A I'm sure they came in and I'm sure they called,</p> <p>2 but additionally we were just really setting up</p> <p>3 shop to teach our technicians this policy and</p> <p>4 train them correctly.</p> <p>5 Q Okay. And who were the technicians there?</p> <p>6 A The technicians at the time, I really would not</p> <p>7 know that unless I reached out to Terra. I</p> <p>8 believe Sonya Hymas might have been one of those</p> <p>9 technicians, but to be honest with you that is</p> <p>10 back in 2010-2011. You know, I would have to</p> <p>11 check.</p> <p>12 Q Did you ask Terra about who these people were?</p> <p>13 A I just asked Terra if anything was followed</p> <p>14 outside of policy. I didn't need to get the</p> <p>15 specific technician's names. There was no reason</p> <p>16 for it with the deposition.</p> <p>17 Q Isn't one of the questions that you were asked to</p> <p>18 answer is whether or not CARD people have been</p> <p>19 trained by any SSA staff in Libby?</p> <p>20 A Correct, and the district manager relayed to me</p> <p>21 that they have not been.</p> <p>22 Q But you didn't bother to check with anyone who was</p> <p>23 actually in Libby and making those communications</p> <p>24 with CARD, did you?</p> <p>25 MR. DUEK: Objection, form. Go ahead.</p>

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<p>1 A She would have reached out to her employees, 2 because I had a number of questions for her and I 3 asked her <u>to</u> check with her technicians that were 4 there at the time.</p> <p>5 Q But you don't know who those technicians were?</p> <p>6 A Uh-uh.</p> <p>7 Q So it's your testimony that Mary Lisa Lewandowski 8 for example never -- who was in Libby, right?</p> <p>9 A She was in Libby.</p> <p>10 Q And it's your testimony that she never 11 communicated with CARD staff about how to fill out 12 an EHH form?</p> <p>13 A Correct.</p> <p>14 Q And she never communicated with any CARD staff 15 about who determines whether an individual 16 qualifies for Medicare benefits, correct?</p> <p>17 MR. DUERK: Objection, vague, use of the 18 term "communicated."</p> <p>19 A Can you repeat that question? I'm sorry.</p> <p>20 Q So no one from SSA in Libby communicated in any 21 way with CARD staff about who determines who 22 qualifies for Medicare benefits?</p> <p>23 A Correct. That's outside the realm of our 24 position.</p> <p>25 Q Does CARD determine whether an individual</p>	<p>1 qualifies for Medicare benefits?</p> <p>2 A Whatever physician completes that form should be 3 following that section 1881A of the act, so that's 4 all I can speak to on that.</p> <p>5 Q Okay. But is it CARD who determine whether 6 someone qualifies for Medicare benefits?</p> <p>7 A Well, CARD isn't the only physicians that complete 8 that checklist, so it's kind of like a vague 9 question to me.</p> <p>10 Q Okay. Does the Social Security Administration 11 determine who qualifies for Medicare benefits?</p> <p>12 A The Social Security Administration --</p> <p>13 MR. KAKUK: Object to the scope. Sorry.</p> <p>14 A -- follows HI 00803.050. We do not make the 15 medical determinations. We rely on the physicians 16 to complete the EHH checklist according to section 17 1881A of the act. We have nothing to do with the 18 actual medical requirements and medical review.</p> <p>19 Q And is that physician the one who makes the final 20 call on whether someone gets Medicare benefits?</p> <p>21 MR. KAKUK: The same objection.</p> <p>22 A The physician that signs the form is basically 23 attesting to the information that he completed 24 within the form, so if he is stating that this 25 person is diagnosed, you know, and continues to</p>
Page 123	Page 124
<p>1 put a date of diagnosis, he completes step 3, he 2 prints his name, he puts his signature and his 3 date, then we are assuming that he followed 4 section 1881A of the act and that he agrees that 5 this person is diagnosed with that condition.</p> <p>6 Q Right. And I think you testified that it's 7 outside of SSA's scope?</p> <p>8 A Absolutely. We are not medical experts.</p> <p>9 Q Right. And you would defer to the medical experts 10 to make that call, correct?</p> <p>11 A Correct.</p> <p>12 Q I am going to draw your attention to again 13 Exhibit 76, page 4, draw your attention to where 14 it says step 2.</p> <p>15 Do you see that?</p> <p>16 A Uh-huh.</p> <p>17 Q And I think your testimony is that the Social 18 Security Administration has no input on step 2, 19 correct?</p> <p>20 A That is correct. That would be filled out by the 21 provider or the physician.</p> <p>22 Q And I think you testified too that if -- that what 23 you're assuming is that the physicians who are 24 following -- who are filling out step 2 are 25 following section 1881A of the act, correct?</p>	<p>1 A Correct.</p> <p>2 Q And it's not your job to second-guess them, 3 correct?</p> <p>4 A Absolutely. We are not medical experts.</p> <p>5 Q Okay. And part of the -- it's the medical 6 provider's job to make a determination whether the 7 minimum medical evidence required is provided, 8 correct?</p> <p>9 MR. KAKUK: Objection, scope.</p> <p>10 MR. DUERK: Objection, form. Go ahead.</p> <p>11 A Correct.</p> <p>12 BY MR. BECHTOLD:</p> <p>13 Q I think you testified that you first heard about 14 that CARD was providing -- CARD physicians were 15 providing the minimum medical evidence required 16 for step 2 as solely a B reader interpretation as 17 qualifying a person for Medicare in March of 2023, 18 is that right?</p> <p>19 MR. DUERK: Objection, form. Go ahead.</p> <p>20 A I think what I testified to is that I was informed 21 that CARD was sending our Kalispell district 22 manager an e-mail stating that they were 23 completing this form even though they didn't agree 24 that the person was diagnosed with that condition, 25 and based on that statement I instructed the</p>

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1	Kalispell manager to, you know, make sure those	1	A Uh-huh.
2	claims were denied, because that's not following	2	Q And then the minimum medical evidence required.
3	section 1881A of the act and that is not something	3	Do you see that?
4	that we can process, and I think I mentioned	4	A Uh-huh.
5	previously that we had an emergency message	5	Q Do you see where it says, "Interpretation by a
6	10042REV that instructs our field offices in that	6	B reader qualified physician of a plain chest
7	same direction.	7	x-ray."
8	Q And I think you have testified too that it is not	8	Do you see that?
9	your call whether to make that determination in	9	A Uh-huh.
10	step 2. It's the medical provider's call, isn't	10	Q Is that what it said?
11	it?	11	A Yes.
12	MR. DUERK: Objection, form. Go ahead.	12	Q So would you agree that interpretation by a
13	A It is the medical provider's call to complete the	13	B reader qualified physician of a plain chest
14	form, but we are assuming they are following	14	x-ray is the sufficient minimum medical evidence
15	section 1881A of the act, and if they are telling	15	required for a diagnosis for purposes of the
16	us that they don't find that person diagnosed with	16	environmental health hazard checklist?
17	that condition to me and they complete the form,	17	MR. DUERK: Objection, foundation.
18	that looks like fraud.	18	A Sir, I can't speak on this form, because I am not
19	Q Okay. May I ask you in step 2 where it says check	19	a medical expert. All I know is if they are
20	the box next to the diagnosed impairments and	20	completing this form, they should be completing it
21	print the date of the diagnosis, do you see that?	21	following the section 1881A of the act.
22	A Yeah, I do.	22	BY MR. BECHTOLD:
23	Q Now let's look at where it says "asbestosis."	23	Q Okay. May I continue?
24	A Uh-huh.	24	A Uh-huh.
25	Q Impairment, asbestosis, diagnosis code 5010.	25	Q Or, underlined, "Interpretation of computed
Page 127		Page 128	
1	tomographic radiograph of the chest by a qualified	1	following section 1881A of the act and they
2	physician."	2	disagree with the diagnosis, but they're
3	The same question, does this satisfy the	3	completing this form.
4	minimum medical evidence required for a diagnosis	4	Q So if two physicians disagree on a diagnosis --
5	for purposes of the environmental health hazards	5	A The signing physician is the one giving the
6	checklist?	6	diagnosis, so if the signing physician states that
7	MR. DUERK: Objection, form, foundation.	7	this person is not diagnosed with this condition,
8	Go ahead.	8	we are going to deny the claim, period.
9	A Again, this is outside of my purview, and if the	9	Q Okay.
10	physician is following section 1881A of the act	10	A Yeah.
11	and he completes this form following that, then I	11	Q So if the signing physician says based upon
12	would assume that he has found them diagnosed with	12	section 1881A there are two ways to qualify for an
13	this condition.	13	environmental health hazards checklist, correct?
14	Q Okay. So if a physician determined that someone	14	MR. KAKUK: Objection, scope.
15	had -- if a qualified physician determined	15	A Again, I don't get into section 1881A of the act
16	based upon interpretation of a computed	16	because that is outside of my purview.
17	tomographic radiograph of the chest by a qualified	17	What I have simply said here is if he
18	physician and a different physician disagreed with	18	disagrees with the diagnosis, he or she or they,
19	that diagnosis or that interpretation is that a	19	and they complete this form and they're stating
20	violation of section 1881A?	20	they disagree that this person is diagnosed with
21	MR. KAKUK: Objection, scope.	21	this condition, we are going to deny them. And to
22	A Again, that is outside of my purview.	22	me, it does look like fraud because they are
23	Q You just told me that you thought it was	23	stating this person is diagnosed with this
24	fraudulent.	24	condition even though they signed off and they
25	A I think it's fraudulent when they are not	25	don't believe that that person has that condition.

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1 Q So you are stepping in now the interpretation
2 of -- stepping in to the determination by the
3 medical provider, is that right?
4 A I am not stepping into the interpretation. I am
5 stating if they are telling us that they don't
6 believe this person has been diagnosed with this
7 condition and they completed the form, we will
8 deny it. We don't get into section 1881A. That
9 is simply up to the physician.
10 Q So if the physician is following section 1881A, it
11 doesn't matter what you think about his diagnosis,
12 correct?
13 MR. DUERK: Objection, form.
14 MR. KAKUK: And scope.
15 A I don't believe that's what I said at all. If
16 they brought it to our attention that they don't
17 feel this person is diagnosed with this condition
18 but they completed the form, we will deny the
19 claim, bottom line. It's not up to social
20 security to determine this medical portion of the
21 policy.
22 Q So you just said both things. You said it's not
23 up to you determine the medical portion, but you
24 would determine the medical portion?
25 A Sir, I think you are kind of misconstruing what I

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1 sense for our technicians to process that.
2 And we have put it out in an emergency
3 message. If it is conveyed to us that they are
4 not truly diagnosed with this condition or let's
5 say they even just marked one of these but they
6 don't put the date of diagnosis, we are going to
7 deny it based on the policy that we gave them in
8 emergency message 10042REV, and that has been
9 since the beginning in 2010.
10 Q How many filled out EHH checklists have you seen?
11 A I honestly can't speak to that. I mean, I have
12 seen 15 to 20, but I mean that was just within
13 getting, you know, just example cases so we could
14 rewrite some language within different policies.
15 We had to take out a lead section of a policy. It
16 wasn't like I was reviewing them.
17 Q I am going to hand you what has been marked
18 Exhibit 516.
19 A Okay.
20 Q You've never seen that before, have you?
21 A No.
22 Q Take a look at the second page.
23 A Okay.
24 Q Do you recognize what that is?
25 A Yes. That's the environmental health checklist.

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1 am saying, because what I am saying is if a
2 physician completes this form and they're stating
3 that they feel this person is diagnosed with this
4 condition, gives a diagnosis date, completes 2,
5 you know, and section 3, prints their name,
6 physician signature and date, but then they say,
7 "But I don't think they are diagnosed with that
8 condition."
9 Big red flag. No, it's not going to go
10 through. We are going to deny it. Why would you
11 complete a form stating that you feel this person
12 is diagnosed, and then you are verbally telling me
13 or within an e-mail that you don't feel they are
14 diagnosed, that's contradictory and that doesn't
15 align with section 1881A of the act.
16 Q So now that's your interpretation of section 1881A
17 of the act, correct?
18 A It doesn't even need to be an interpretation. If
19 somebody is telling me they clearly filled out a
20 form that they don't agree with the diagnosis but
21 they signed off on it, doesn't that look to you
22 like fraud?
23 If I am completing this form and I am
24 saying this person is diagnosed, but guess what,
25 they are not really diagnosed, that does not make

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1 This typically would not come with this because
2 this is all we require.
3 Q And if you look at page 2 of Exhibit 516, do you
4 notice any handwriting in there?
5 A It says "outside read only." But it's also
6 missing the name, social security number and date
7 of birth of the person.
8 Q Yeah. They've been redacted.
9 A Okay. So I can't verify if this is a true,
10 completed claim.
11 Q No, I am not asking you to verify. I'm just
12 asking you to look at it.
13 A Okay.
14 Q Have you seen an EHH form that has similar
15 indications on it?
16 A No.
17 Q And how many EHH forms have been turned in by
18 CARD?
19 A I would have no idea off the top of my head. That
20 would take some time to research. You are talking
21 about going all the way back to like 2010.
22 Q Yeah. A lot?
23 A Yeah. Well, not just CARD. I mean, again,
24 you know, other physicians fill these forms out as
25 well.

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1 Q Sure.

2 A Yeah.

3 Q Would it surprise you that there are -- since the

4 beginning of 2011 CARD has indicated when the

5 qualification for Medicare based upon their

6 determination by an outside B reader only has

7 always been demarcated on the EHH form?

8 MR. KAKUK: Objection to relevance and

9 scope.

10 MR. DUERK: And foundation. Go ahead.

11 A I am not understanding your question exactly.

12 Are you indicating like they write

13 different comments within there, the checklist?

14 Q Right.

15 A Would it surprise me to know that they have been

16 doing that? Yes, because I haven't seen a form

17 like that.

18 Q Has Terra Whiteman ever seen a form like that?

19 MR. DUERK: Objection to foundation.

20 A Again, this is my first time hearing it, so I

21 wouldn't know.

22 Q And that's not something you ever inquired of her,

23 is it?

24 A This is the first time I am hearing about it, so

25 no.

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1 diagnosis.

2 Q Right. And so what's the response?

3 A It sounds like she has a B read DX, which to me

4 would be a diagnosis. I don't know. We are not

5 medical experts, so I would assume that DX means

6 diagnosis. "I will look it up and get back to you

7 momentarily." And she just basically says,

8 "Thanks. That one I couldn't track down."

9 Q And after the B read DX --

10 A CW is a B read. It looks like I sent her EHH in

11 2015. I will resend today.

12 But to be honest here, I mean, Sonya is not

13 going to be in a position to know what a B read

14 is. She is asking if they are being diagnosed.

15 That's the bottom line. We don't get into the B

16 reads. You know, CARD can go on and on about

17 B reads. They are completing that form. We are

18 assuming they are following that section of the

19 act, so I mean it's not Sonya's job to, you know,

20 ask her about B reads or anything. She is asking

21 for a diagnosis.

22 Q Right. And CARD is telling her it's a B read

23 diagnosis, right?

24 A Yeah, but for her to be knowledgeable about

25 B reads? We don't train them on that. She's not

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1 Q So as far as you know CARD has never outside of

2 this one form that you see in front of you ever

3 indicated on those EHH forms that the basis for

4 their qualification, their finding of

5 qualification for Medicare benefits was based upon

6 solely an outside B read?

7 A As far as I know, I have never seen anyone like

8 this, and I haven't asked Terra about this because

9 this the first time I am seeing one.

10 Q Okay. I am going to hand you what has been marked

11 as Exhibit 85. Take a look at that.

12 A Okay. Okay.

13 Q Go ahead and look through all the pages.

14 A Okay. So this is back and forth from

15 Sonya Peterson who was a claims technical expert

16 to Mary Karen Caraway which I am assuming is with

17 CARD, but it looks like she received a letter from

18 one of the beneficiaries or claimants that she is

19 now eligible for Medicare benefits regardless of

20 her age based on these findings.

21 One of the doctors did identify a small

22 abnormality on your chest x-ray. Nothing has

23 significant health indications nor is it

24 considered a diagnosis of asbestos-related

25 disease. And she is asking if there is a

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1 a medical expert. I think bottom line she is just

2 looking for a diagnosis.

3 Q Right. And CARD told her it was a B read

4 diagnosis, isn't that right?

5 A They did tell her it's a B read diagnosis, but I

6 am assuming that she is assuming they completed

7 the form correctly.

8 MR. KAKUK: Can we go off the record for

9 a second and take a short break?

10 THE VIDEOGRAPHER: The time is 3:31. We

11 are off the record.

12 (Break taken.)

13 THE VIDEOGRAPHER: The time is 3:38. We

14 are back on the record.

15 BY MR. BECHTOLD:

16 Q Ms. Hillmann, I am going to draw your attention to

17 Exhibit 135.

18 A Okay.

19 Q And direct your attention to paragraph 25, and

20 paragraph 25 deals with the award that SSA

21 presented to CARD, and I think your testimony is

22 you don't know why SSA presented this award to

23 CARD, correct?

24 A Correct.

25 Q And did you ask Terra Whiteman why?

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<p>1 A I did not ask Terra Whiteman. I asked</p> <p>2 Mary Lisa Lewandowski, our regional commissioner,</p> <p>3 and I also asked headquarters. I was trying to</p> <p>4 locate any awards to get more additional</p> <p>5 information.</p> <p>6 Headquarters didn't have any awards on</p> <p>7 record for monetary value or just exemplary</p> <p>8 service, but Mary Lisa Lewandowski said there</p> <p>9 could have been a regional-level award, but she</p> <p>10 didn't have any record of it.</p> <p>11 Q Why didn't you ask Terra Whiteman?</p> <p>12 A Because she wouldn't have been the one to give out</p> <p>13 the award. It would have been the regional</p> <p>14 commissioner's office.</p> <p>15 Q Do you know what Terra Whiteman looks like?</p> <p>16 A Yes, I do. I see her on Zoom.</p> <p>17 Q I am going to hand you Exhibit 336.</p> <p>18 Can you take a look at that?</p> <p>19 A Okay.</p> <p>20 Q You have never seen that before, have you?</p> <p>21 A No.</p> <p>22 Q What is that?</p> <p>23 A It says it's a Center for Asbestos Related Disease</p> <p>24 (CARD) for outstanding partnership with SSA and</p> <p>25 Medicare outreach to individuals with</p>	<p>1 asbestos-related disease.</p> <p>2 Q Is it an award from SSA to CARD?</p> <p>3 A It appears to be so.</p> <p>4 Q I am going to show you a photo.</p> <p>5 A Okay.</p> <p>6 Q And I apologize. Can you tell me who is in that</p> <p>7 photo?</p> <p>8 MR. DUEK: Objection. Can we see a</p> <p>9 picture? Is this an exhibit?</p> <p>10 MR. BECHTOLD: Not yet. I didn't expect</p> <p>11 it to be.</p> <p>12 MR. DUEK: Non-disclosure.</p> <p>13 Q Can you tell me who is in the photo?</p> <p>14 A The only person that I kind of recognize is Terra</p> <p>15 over here in the black, unless she has died her</p> <p>16 hair.</p> <p>17 Q And could you tell us what's going on in this</p> <p>18 photo?</p> <p>19 A It appears that there is an award there, but I</p> <p>20 can't see what the award is for, if it's this one</p> <p>21 or what.</p> <p>22 Q So you don't know which SSA employees went to</p> <p>23 Libby to present this award?</p> <p>24 A I didn't know that SSA employees went to Libby to</p> <p>25 present the award, because that's Terra Whiteman</p>
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<p>1 who is the Kalispell manager. I am saying that</p> <p>2 the award would have come from the regional</p> <p>3 commissioner's office. We don't give awards out</p> <p>4 locally like that. That would be something either</p> <p>5 from headquarters or regional level.</p> <p>6 Q So your testimony is that's not an SSA award?</p> <p>7 A I did not say that. That could very well be one.</p> <p>8 We just didn't find any records of it.</p> <p>9 Q Okay.</p> <p>10 A Did you want your exhibit back?</p> <p>11 Q No.</p> <p>12 A Okay.</p> <p>13 Q So not only -- you don't know why SSA gave this</p> <p>14 award, correct?</p> <p>15 A Correct. This is my first time seeing it. But as</p> <p>16 I have said previously, Mary Lisa Lewandowski did</p> <p>17 say there could have potentially been a</p> <p>18 regional-level award for CARD, but she had no</p> <p>19 records of it.</p> <p>20 Q So as I review your testimony, it is you don't</p> <p>21 know who the technicians were who went to Libby in</p> <p>22 2011, correct?</p> <p>23 A The technicians from social security?</p> <p>24 Q Yeah.</p> <p>25 A From the regional office? I did list them.</p>	<p>1 Q No, who were the technicians who were processing</p> <p>2 the Medicare claims.</p> <p>3 A Oh, within the field office? No, I cannot name</p> <p>4 all of them offhand, but I can tell you</p> <p>5 Sonya Hymas was one of them.</p> <p>6 Q Okay. So Sonya was one?</p> <p>7 A Uh-huh.</p> <p>8 Q Did you talk to Sonya Hymas about information</p> <p>9 required for this testimony today?</p> <p>10 A Sonya Hymas hasn't been employed by this agency</p> <p>11 for I think maybe over a year, not even over a</p> <p>12 year, less than a year.</p> <p>13 Q So the answer is no?</p> <p>14 A No.</p> <p>15 Q You didn't attempt to, did you?</p> <p>16 A I would not contact her outside of social</p> <p>17 security. We don't have any kind of personal</p> <p>18 level like that.</p> <p>19 Q Okay. What did you ask Terra Whiteman about</p> <p>20 regarding this deposition?</p> <p>21 A Anything within the subpoena that I was looking</p> <p>22 for, any of the documents that you were -- you</p> <p>23 know, that you have listed or if there was any</p> <p>24 training that I was unaware of that, you know,</p> <p>25 headquarters hasn't had or the regional level</p>

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1 office hadn't had where we gave some type of
 2 training to CARD, and she stated no.
 3 **Q Okay. So as I understand your testimony, you did**
 4 **not systematically go through the items in this**
 5 **subpoena, correct, with Terra Whiteman?**
 6 MR. DUERK: Objection, form. Go ahead.
 7 A I took pieces out of each of those questions and
 8 asked Terra about every single one of them.
 9 **Q Except the one about the award?**
 10 A No. I wouldn't ask her about the award because
 11 that would not come from her office. That would
 12 be either regional level or headquarters.
 13 **Q So I think you're contradicting yourself.**
 14 MR. DUERK: Objection, counsel
 15 testifying. Go ahead.
 16 BY MR. BECHTOLD:
 17 **Q Again, just to clarify this, you did not go**
 18 **through each of these numbered requests in the**
 19 **subpoena with Terra Whiteman, correct?**
 20 A I did not go through the one regarding the award.
 21 That was the only one I did not go through.
 22 **Q Okay. I am going to draw your attention back to**
 23 **paragraph 19, and I believe your testimony is that**
 24 **regarding paragraph 19 that Social Security**
 25 **Administration plays no role in step 2, is that**

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1 step 1 of the EHH checklist, correct?
 2 A Correct.
 3 **Q And is it Terra Whiteman's testimony that CARD's**
 4 **employees do not fill out SSA-827, the medical**
 5 **release forms and send that to -- and have the**
 6 **patients sign and send that to SSA?**
 7 A Correct.
 8 **Q And the only basis of your knowledge is what**
 9 **Terra Whiteman told you?**
 10 A Correct. And she was the district manager during
 11 that period of time, so she would know. She sees
 12 these EHH checklists and she knows how her
 13 technicians process these claims.
 14 **Q Okay. But you have no personal knowledge, right?**
 15 A I have no personal knowledge because I am not
 16 within that office, but I am taking the district
 17 manager's word at it from what she provided me.
 18 **Q Okay. And then that's your same testimony for**
 19 **paragraph 19, paragraph 20, paragraph 21 and**
 20 **paragraph 22, correct, regarding step 1?**
 21 A I believe so. I believe it involved the same
 22 thing where we fill out step 1. Step 2 and step 3
 23 are completed by the physician following section
 24 1881A of the act.
 25 **Q Right. And it's the physician's job to follow**

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1 correct?
 2 MR. DUERK: Objection, form. Go ahead.
 3 A I said that, yes.
 4 **Q And I think you testified that what's incorrect**
 5 **about this is that it's the Social Security**
 6 **Administration personnel who fill out step 1,**
 7 **correct?**
 8 A I said that they complete step 1, and then step 2
 9 and step 3 are completed by CARD following section
 10 1881A of the act.
 11 **Q Who did you talk to to find out that SSA employees**
 12 **fill out step 1?**
 13 A That's in policy. It's HI 00803.050. It's been
 14 in policy since the beginning.
 15 **Q And does that mean it's what actually happens?**
 16 A Yes.
 17 **Q So it's your testimony that EHH checklists are**
 18 **provided from SSA to CARD after step 1 is filled**
 19 **out?**
 20 A To the best of my knowledge, this is how we are
 21 supposed to be filing these claims, and this is
 22 how Terra Whiteman said that these claims are
 23 being processed. She confirmed that.
 24 **Q Okay. So it's your testimony that Terra Whiteman**
 25 **told you that CARD employees do not fill out**

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1 section 1881A of the act?
 2 A Correct. Yes.
 3 **Q And it's not your job to second-guess them?**
 4 A Uh-huh.
 5 **Q So regarding paragraph 26, so why does CARD fill**
 6 **out the EHH checklist?**
 7 A Why do they fill out section 2 and 3? Is that
 8 what you're asking?
 9 **Q No. I just said the EHH checklist.**
 10 A Because that's what they have to do when they are
 11 following section 1881A of the act. We are not
 12 medical experts. We don't diagnose patients with
 13 diseases. We are not doctors. We are not
 14 certified. We haven't gone to school for that.
 15 We are simply claims technicians processing
 16 claims.
 17 **Q So how do Social Security Administration employees**
 18 **look for asbestos-related disease or conditions in**
 19 **step 2?**
 20 A How do we look for them? We look -- if you go to
 21 the checklist, again, section 2, we are making
 22 sure that there is a listed impairment or two and
 23 there is a date of diagnosis and step 3 is
 24 completed, and then there is a printed name of a
 25 physician with the physician's signature and date.

<p style="text-align: right;">Page 145</p> <p>1 We are assuming the physician followed that</p> <p>2 section of the act.</p> <p>3 Q And what's the difference between a clinical</p> <p>4 diagnosis and a diagnosis for purpose of the EHH</p> <p>5 checklist?</p> <p>6 MR. KAKUK: Objection, scope.</p> <p>7 MR. DUERK: Foundation. Go ahead.</p> <p>8 A To be honest with you, that is not within policy</p> <p>9 and that's outside of the realm of my expertise.</p> <p>10 I couldn't answer that for you. I think that's</p> <p>11 more of a medical position, and I can't answer</p> <p>12 that.</p> <p>13 Q Is it fair to say that SSA has no position?</p> <p>14 A I would say that we don't get involved with that.</p> <p>15 Q Okay.</p> <p>16 A No.</p> <p>17 Q And I think your testimony for paragraph 28 is</p> <p>18 again that's something where SSA doesn't get</p> <p>19 involved with, correct?</p> <p>20 A Correct.</p> <p>21 Q And I think for paragraph 29 you agreed that</p> <p>22 step 2 is completed by the healthcare provider who</p> <p>23 will identify the asbestos-related conditions and</p> <p>24 the date of diagnosis, correct?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 146</p> <p>1 Q That's not SSA's job?</p> <p>2 A That is not SSA's job. We are not medical</p> <p>3 experts.</p> <p>4 Q So it's not SSA's job to determine whether someone</p> <p>5 could be diagnosed by an interpretation of a</p> <p>6 computed tomographic radiograph of the chest by a</p> <p>7 qualified physician, right?</p> <p>8 A SSA's job is to make sure this form is completed,</p> <p>9 and it is stating that this person is diagnosed</p> <p>10 with one of these listed conditions with the date</p> <p>11 of diagnosis and has been signed off by a</p> <p>12 physician that has been following section 1881A of</p> <p>13 the act.</p> <p>14 Q I am going to draw your attention to Exhibit 123</p> <p>15 which is tab 7 in your book.</p> <p>16 A Okay.</p> <p>17 Q Did the patient in Exhibit 123 have a diagnosis</p> <p>18 under section 1881A of the act?</p> <p>19 MR. KAKUK: Objection, scope.</p> <p>20 A This is just a letter from CARD stating that -- I</p> <p>21 mean, this is the first time I am seeing this</p> <p>22 letter, and it's saying, "You participated in an</p> <p>23 asbestos health screening on 12-11-14, and at that</p> <p>24 time you were not diagnosed with an</p> <p>25 asbestos-related disease."</p>
<p style="text-align: right;">Page 147</p> <p>1 I don't believe they would be following</p> <p>2 section 1881A of the act. I can't speak on this</p> <p>3 form and what they complete on the checklist. We</p> <p>4 are assuming they are following the guidelines of</p> <p>5 section 1881A of the act.</p> <p>6 Q So is it your job to interpret section 1881A of</p> <p>7 the act or is it the physician's job to interpret?</p> <p>8 A That is the physician's job. If he completes that</p> <p>9 checklist and he states that they are diagnosed</p> <p>10 with that condition, we are assuming he followed</p> <p>11 the guidelines, he or she or they followed the</p> <p>12 guidelines of the act.</p> <p>13 Q Again, you defer to his determination, correct?</p> <p>14 A Yes, we defer to their determination, yes.</p> <p>15 Q So when were you first made aware of this lawsuit?</p> <p>16 A I think when we got the subpoena. I can't be too</p> <p>17 sure. I don't remember.</p> <p>18 Q Was it several years ago or was it last year or</p> <p>19 was it a couple months ago?</p> <p>20 A A couple months ago, this year.</p> <p>21 Q So you were never made aware of any requests from</p> <p>22 any of the parties for information in this case?</p> <p>23 A They wouldn't send those directly to me. They</p> <p>24 would send those to the appropriate parties if</p> <p>25 there was a disclosure request.</p>	<p style="text-align: right;">Page 148</p> <p>1 Q And you being the --</p> <p>2 A Medicare lead.</p> <p>3 Q The medicare lead would not -- you would not be an</p> <p>4 important person to inform about requests for</p> <p>5 information for Medicare information?</p> <p>6 A I believe they were trying to get information from</p> <p>7 about 2010 to whenever. That would not be a time</p> <p>8 period I was a Medicare lead. I wouldn't be the</p> <p>9 appropriate party to obtain that information from.</p> <p>10 Q And when did you become the Medicare lead?</p> <p>11 A 2018.</p> <p>12 Q And it's the Social Security Administration's</p> <p>13 position that no information post 2018 was asked</p> <p>14 for?</p> <p>15 MR. KAKUK: Objection, scope.</p> <p>16 A I would not know. I was not asked to supply any</p> <p>17 documentation to my knowledge.</p> <p>18 Q Has the Social Security Administration been aware</p> <p>19 that CARD has filled out EHH forms for individuals</p> <p>20 based only on outside reader interpretations since</p> <p>21 2010?</p> <p>22 A The first knowledge that we had of them completing</p> <p>23 an EHH checklist where they said that they -- they</p> <p>24 stated that the person -- the physician didn't</p> <p>25 feel that person was diagnosed with that condition</p>

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1 was in spring 2023. That is the first time that
2 we are hearing about this.
3 **Q I am going to hand you Exhibit 83.**
4 **A Okay.**
5 **Q Take a look at that.**
6 **A Do you want me to read it?**
7 **Q Do you recognize what that document is?**
8 **A That is an e-mail from a Kalispell employee,**
9 **Sonya Peterson or Sonya Hymas who is a claims**
10 **technical expert to one of the CARD center**
11 **employees, I am assuming, and she said if the**
12 **claimant has been diagnosed with one of the**
13 **impairments on that list, they qualify, so to us**
14 **either they are diagnosed or they are not.**
15 **Q Okay. So let's start at the bottom where the**
16 **e-mail train starts.**
17 **A Okay.**
18 **Q And so describe what's happening in this e-mail.**
19 **A She contacted them, and she said this guy called**
20 **and said he has not been diagnosed with an**
21 **asbestos-related condition, but said you told him**
22 **to call us.**
23 **Q Okay. And that's Sonya's e-mail to CARD, correct?**
24 **A Correct. And then CARD wrote back.**
25 **"Hi Sonya. TT is not diagnosed, but has**

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1 that.
2 **Q Correct. Does SSA have any opinion on what the**
3 **difference between a clinical diagnosis of**
4 **asbestosis, pleural thickening or pleural plaques**
5 **by a CARD physician?**
6 **MR. KAKUK: Objection, scope.**
7 **Q Compared to a positive interpretation of**
8 **asbestosis, pleural thickening or pleural plaques**
9 **on a CT by a qualified physician for purposes of**
10 **the EHH checklist?**
11 **MR. DUERK: Sorry. Objection, form.**
12 **MR. KAKUK: And scope.**
13 **A Again, that's outside of my purview, and I have to**
14 **say I don't have an opinion because I am not a**
15 **medical expert.**
16 **Q Why don't we go off the record for a little bit.**
17 **I am going to do a quick review, and then probably**
18 **about five minutes.**
19 **A Okay.**
20 **THE VIDEOGRAPHER: The time is 4:00. We**
21 **are off the record.**
22 **(Break taken.)**
23 **THE VIDEOGRAPHER: The time is 4:07. We**
24 **are back on the record.**
25 **BY MR. BECHTOLD:**

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1 received a positive outside read making him
2 eligible for the EHH designation. It is always
3 difficult for me explaining to a patient that they
4 are not diagnosed, but then need to call you guys
5 to receive the benefits. In the future, should
6 patients with positive outside reads just state
7 that they have positive outside read or just state
8 they are diagnosed? Sorry about the confusion."
9 And Sonya followed policy and stated, "If
10 the claimant has been diagnosed with one of the
11 impairments on that list, they qualify."
12 So to us, either they are diagnosed or they
13 are not, and that is inside the scope of
14 HI 00803.050. She is not going into specifics
15 about a B read or any of that, because that's not
16 her job.
17 **Q Right.**
18 **A Right.**
19 **Q So it's CARD's job to make that determination?**
20 **A Correct.**
21 **Q All right. And it's SSA's job to defer to CARD?**
22 **A It's SSA's job to make sure that whoever is**
23 **completing that EHH checklist is following the**
24 **guidelines of section 1881A of the act. If this**
25 **is completed, we are assuming they are following**

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1 **Q Ms. Hillmann, as I understand your testimony, you**
2 **have no personal knowledge of communications**
3 **between CARD staff and SSA staff at the Kalispell**
4 **level, correct?**
5 **A I do have knowledge of the spring 2023**
6 **correspondence between the CARD staff and**
7 **Terra Whiteman, but prior to that, no.**
8 **Q Okay. And again you have no personal knowledge of**
9 **how CARD staff and SSA staff in Kalispell handled**
10 **EHH forms, correct?**
11 **A I do know that our SSA staff follows that**
12 **HI 00803.050 based on Terra Whiteman's response**
13 **who is the district manager.**
14 **Q Okay. And if it turns out that CARD staff are the**
15 **one who actually are filling out step 1, does that**
16 **make those EHH checklists invalid?**
17 **A I wouldn't assume they would be invalid as long as**
18 **they are completing step 2 and step 3. It's just**
19 **that we should be following the proper**
20 **instructions within the policy where we initiate**
21 **that on our side.**
22 **Q But it doesn't invalidate those EHH checklists?**
23 **A Uh-uh.**
24 **MR. KAKUK: That was a no?**
25 **A That was a no.**

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<p>1 BY MR. BECHTOLD:</p> <p>2 Q So I would like to draw your attention to</p> <p>3 Exhibit 136 which is your declaration that you</p> <p>4 submitted earlier in this case.</p> <p>5 A Okay.</p> <p>6 Q In paragraph 1 you state that you searched SSA's</p> <p>7 electronic records which included archived</p> <p>8 policies and information stored on the agency's</p> <p>9 drive?</p> <p>10 A Correct.</p> <p>11 Q Did that include e-mail communications?</p> <p>12 A It would not necessarily mean e-mail</p> <p>13 communications. It's our T-drive where we store</p> <p>14 any type of Libby correspondence that Kathy kept,</p> <p>15 the previous Medicare lead.</p> <p>16 Q So did it include e-mail correspondence or not?</p> <p>17 A There was e-mail correspondence between Kathy and</p> <p>18 then headquarter components about training our</p> <p>19 field offices.</p> <p>20 Q But as far as you know, there was no e-mail</p> <p>21 communications between SSA staff and CARD staff?</p> <p>22 A Correct.</p> <p>23 Q And then you stated you further consulted with</p> <p>24 current agency personnel who may have been</p> <p>25 involved in CARD's interaction during this period,</p>	<p>1 and is that Mary Lisa Lewandowski and</p> <p>2 Terra Whiteman?</p> <p>3 A Correct.</p> <p>4 Q Anyone else?</p> <p>5 A I also contacted a couple other technicians that</p> <p>6 went out there to provide the training. That</p> <p>7 would be Kelly Hansen. She is currently a</p> <p>8 supervisor within our regional office, and also</p> <p>9 Chris DiGiacomo was another technician that went</p> <p>10 out there to provide training to the social</p> <p>11 security technician, and he is also a manager as</p> <p>12 well.</p> <p>13 Q Did you contact Nancy Berrihill at that time?</p> <p>14 A No, I did not.</p> <p>15 Q And she was in Libby at that time, correct?</p> <p>16 A She did come for one -- I believe one training.</p> <p>17 It might have been two.</p> <p>18 Q And she still works for SSA, right?</p> <p>19 A Correct.</p> <p>20 Q How come you didn't talk to her?</p> <p>21 A Because I went directly through our regional</p> <p>22 commissioner who would have a little bit more</p> <p>23 information, and if she needed to reach out to</p> <p>24 Nancy, she would.</p> <p>25 Q In paragraph three you state that in the 2010 to</p>
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<p>1 2011 timeframe regional office personnel</p> <p>2 interacted with employees from CARD because CARD</p> <p>3 prepared the EHH Medicare claims for submission to</p> <p>4 SSA.</p> <p>5 What was the nature of the interaction?</p> <p>6 A I believe they were just doing Medicare EHH</p> <p>7 outreach, so they were outreaching to the</p> <p>8 community to find individuals affected, and I</p> <p>9 think that they might have like -- potentially the</p> <p>10 only contact that they had with them is about the</p> <p>11 Medicare outreach, and if they had questions</p> <p>12 about, you know, if they were missing forms or</p> <p>13 what have you regarding the claims process.</p> <p>14 Q So as I understand it, Medicare eligibility based</p> <p>15 on the EHH checklists is something that the SSA</p> <p>16 technicians in Libby were processing at that time?</p> <p>17 MR. KAKUK: Objection, scope.</p> <p>18 A Yeah. Can you reread that question? I guess I</p> <p>19 didn't understand it fully.</p> <p>20 Q So the Medicare technicians -- excuse me. The SSA</p> <p>21 technicians were processing Medicare claims based</p> <p>22 upon the EHH checklists in Libby?</p> <p>23 A They were basing it following the instructions in</p> <p>24 HI 00803.50.</p> <p>25 Q And the EHH checklist is a SSA created document,</p>	<p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q And SSA gave that document to CARD without any</p> <p>4 directions, correct?</p> <p>5 A To my knowledge, yes. But CARD has been</p> <p>6 instructed to continue to follow the section 1881A</p> <p>7 of the act.</p> <p>8 Q Okay. Who instructed CARD to follow section 1881A</p> <p>9 of the act?</p> <p>10 A I would not know. I mean, I am assuming that that</p> <p>11 was some type of correspondence at some time. I</p> <p>12 don't know they would just complete a checklist</p> <p>13 without knowing they have to follow the guidelines</p> <p>14 of the act. I am sure there is correspondence in</p> <p>15 there somewhere.</p> <p>16 Q Okay. So you are sure that there is</p> <p>17 correspondence from SSA to CARD telling them to</p> <p>18 follow section 1881A of the act?</p> <p>19 A Well, I don't know if it's directly from SSA. I</p> <p>20 mean, I am just assuming that it's probably</p> <p>21 underneath their grant guidelines for them to</p> <p>22 perform, you know, those type of reviews within</p> <p>23 their clinic.</p> <p>24 Q Okay. So you don't know?</p> <p>25 A I don't know. I do know that they do get grants</p>

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1 and they base them off of certain things, so I
2 can't speak to that. That's outside of my
3 purview.
4 Q Okay. But as far as you know, there was never
5 anything from SSA to CARD telling them how to fill
6 out the EHH checklist?
7 A Correct.
8 Q And as far as you know, there was never any
9 informal communication of any type between CARD
10 staff and SSA staff about how to fill out these
11 EHH checklists, correct?
12 A Correct.
13 Q And you base that upon your communications with
14 Mary Lisa Lewandowski and Terra Whiteman?
15 A Correct, and the headquarters components.
16 Q What are the headquarters components again?
17 A The office of information security programs and
18 then the office of program support. I'm going to
19 mess -- It's OPSOS. It is office of program
20 support. I can't think of the last two of that
21 acronym, but those are two headquarters components
22 that have trained and actually initiated this
23 policy when it originally came out.
24 Q So once the SSA employees process an environmental
25 health hazards checklist, what happens next?

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1 Q Oh, I do have something further. I want to hand
2 you what was an attachment to Exhibit 139.
3 A Okay.
4 Q Have you seen this document before?
5 A I have not.
6 Q If you look at Exhibit 139, you see on page 1 of
7 139 at the bottom where there is an e-mail from
8 Tracy McNew to Terra Whiteman.
9 A Uh-huh. I received this e-mail, but I did not
10 receive this attachment, so this is the first time
11 I am seeing it.
12 Q Okay. So your testimony is that Terra Whiteman
13 forwarded you the e-mail but did not forward you
14 the attachment to the e-mail?
15 A Correct.
16 Q Okay. That's all the questions.
17 EXAMINATION
18 BY MR. DUERK:
19 Q I have just a few follow-ups.
20 A Okay.
21 Q Mr. Bechtold asked you whether or not CARD had
22 been informed by SSA about how to fill out EHH
23 checklists.
24 Do you remember that question?
25 A Yes.

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1 A Once they process it? Well, again, the
2 instructions in HI 00803.50 if they follow that
3 and the EHH checklist is complete there is a
4 diagnosis checked, there is a date of diagnosis,
5 section 3 is completed, printed name of the
6 physician, physician signature and date. We are
7 assuming that physician followed section 1881A of
8 the act, and we process the claim.
9 Q So what does it mean to process the claim?
10 A We allow them for EHH Medicare.
11 Q When you say allow, what does that mean?
12 A We process an allowance to entitle them to
13 Medicare under the environmental health hazards
14 provisions.
15 Q So what do the SSA employees do to make that
16 happen?
17 A They take a claim within our system and they code
18 it appropriately and then they process it, and it
19 sets up the record and it sends a Medicare card.
20 Q Okay. So SSA processes it and inputs it into the
21 system and the system -- they have been approved
22 and the system then gives them Medicare benefits?
23 A Correct.
24 Q Okay. I have nothing further. Thank you.
25 A Uh-huh.

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1 Q Okay. Regardless of whether you can point to any
2 communication between SSA and CARD today on that
3 topic, based on what information you have reviewed
4 in your factual inquiry, are resources readily
5 available to the public about how to fill out EHH
6 checklists in terms of the POMS, section 1881A of
7 the Affordable Care Act itself, and the emergency
8 policy 10042REV that you referenced earlier?
9 A Those are public-facing policies. That means the
10 public can obtain those, yes.
11 Q And did each of those sources of information that
12 are publicly-available provide clear direction in
13 terms of the requirements of a CARD patient or any
14 patient in order to obtain Medicare benefits?
15 MR. KAKUK: Objection, scope.
16 MR. BECHTOLD: Form.
17 A Yes, for EHH Medicare, yes. Correct.
18 Q And are you aware of that just based on your own
19 personal knowledge having seen those documents?
20 A Uh-huh.
21 Q Is that a yes?
22 A That's a yes.
23 Q Okay. Now, Ms. Hillmann, you may or may not be
24 aware of this, but are you aware that even CARD's
25 website itself says you need a diagnosis of

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1 asbestos-related disease in order to get Medicare?

2 A No, I was not aware of that.

3 Q All right. In terms of questions that

4 Mr. Bechtold asked you about any type of training

5 that might have been provided or wasn't provided

6 to CARD from any of these different SSA employees,

7 I believe Mary Lisa Lewandowski is somebody that

8 you spoke to about this issue of training, is that

9 right?

10 A Correct.

11 Q Did you speak with Terra Whiteman or Whiteman

12 about the issue of training also?

13 A Yes.

14 Q There was some other names that you mentioned

15 among SSA staff related to this topic of CARD and

16 whether or not any SSA training occurred.

17 Do you remember any of the other names of

18 individuals?

19 A The regional office employees that train the SSA

20 staff in Kalispell, that would be Kelly Hansen.

21 Q Okay.

22 A And then Chris DiGiacomo, and I believe I said

23 Nancy Berrihill as well. I did speak with

24 Kelly Hansen and I did speak with Chris DiGiacomo,

25 and they also verified that they never gave CARD

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1 A Yeah.

2 Q And in terms of where those field employees would

3 have gotten information about how to fill out an

4 EHH form, is it fair to assume that would have

5 been from the POMS?

6 A It would have been directly from POMS.

7 Q Right.

8 A Yeah.

9 Q Nothing in the POMS mentions that patients are

10 eligible for Medicare on a B read alone, correct?

11 MR. KAKUK: Objection, scope.

12 MR. BECHTOLD: Form.

13 A Correct.

14 BY MR. DUERK:

15 Q All right. Nothing in the POMS, none of the

16 language in the POMS that you have read states

17 that it's acceptable to submit a patient for

18 Medicare without a diagnosis of asbestos-related

19 disease, correct?

20 MR. KAKUK: The same objection.

21 MR. BECHTOLD: Form.

22 A Correct.

23 BY MR. DUERK:

24 Q And I am basing that on language you yourself have

25 read in the POMS, fair?

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1 any training as well.

2 Q In terms of all of the interviews conducted and

3 all of the written material you received, did

4 every source of information point to the same

5 response that SSA did not train CARD how to fill

6 out these EHH forms at the CARD clinic at any

7 time?

8 A Correct.

9 Q Okay. Now, I want to entertain a hypothetical

10 here. The hypothetical that I want to entertain

11 is if somehow someone like Sonya Hymas,

12 Sonya Peterson, if an SSA field office employee

13 had provided training to CARD about how to fill

14 out an EHH form, if that had occurred, would that

15 training have been based on what those SSA field

16 agents had been instructed according to the POMS?

17 A I can't speak to the -- I don't know what they

18 would train them on. Honestly, they would just

19 train them on this section has to be completed,

20 this section has to be completed, because we are

21 not medical experts, so I don't believe training

22 would be beneficial for CARD, because we are not

23 medical experts and we can't speak to the section

24 1881A of the act because we're not trained on it.

25 Q All right.

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1 A Yes.

2 Q Okay. Mr. Bechtold asked you if you had any

3 personal knowledge of the communication between

4 CARD and SSA. I believe you said you didn't have

5 any personal knowledge of that communication, but

6 during your factual inquiry related to that topic

7 did you review a certain amount of communication

8 between CARD and the Social Security

9 Administration?

10 A I can only speak to what I received in the spring.

11 That's the only correspondence that I have seen

12 between social security and CARD.

13 Q Okay.

14 A Yeah.

15 Q And in terms of any discussions with any of the

16 members of the Social Security Administration that

17 we have mentioned today, did you ask specific

18 questions of them about whether there was any

19 communication they were aware of between CARD and

20 the SSA related to the issues of training or

21 notice or any of these other issues that we have

22 discussed today?

23 A I did reach out to Terra Whiteman on the majority

24 of the questions except for the one about the

25 award, and then I did ask Kelly Hansen and

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1 Chris DiGiacomo if -- again, I am just going to
 2 reiterate what I said in my previous statement.
 3 Did we give any additional, do you know if we gave
 4 any additional training to the CARD employees, and
 5 they all stated that we hadn't to their knowledge.
 6 Q And Terra Whiteman was based in -- where is
 7 Terra Whiteman based now?
 8 A Kalispell.
 9 Q And how long has Terra Whiteman been based in
 10 Kalispell?
 11 A Oh, goodness. I would say -- I would have to
 12 actually ask her, but she has been there for quite
 13 some time.
 14 Q Okay.
 15 A Yeah. Most of her tenure has been in that office.
 16 Q Mr. Bechtold had you look at two exhibits,
 17 Exhibit 85, an e-mail between Sonya and Mary Karen
 18 Caraway.
 19 Do you have that in front of you?
 20 A If I can find it. Let me see. Give me one
 21 second.
 22 Q Why don't we take a five-minute break and we will
 23 organize the documents and then get back on the
 24 record.
 25 A Okay.

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1 A Correct.
 2 Q Okay. So if the CARD clinic represents to the
 3 Social Security Administration that a patient has
 4 a diagnosis, in SSA's view that patient is
 5 Medicare eligible, fair?
 6 A If the CARD clinic presents us with that checklist
 7 with one of the diagnoses that are listed with the
 8 date of diagnosis and completes 2 and 3, then yes.
 9 Q All right.
 10 A Yeah.
 11 Q Nowhere in this e-mail train does it say that this
 12 patient does not have a diagnosis, correct, except
 13 in the first e-mail that kicks this all off?
 14 The subsequent pages don't say anywhere
 15 affirmatively this patient is not sick, fair?
 16 A To the best of my knowledge, yes.
 17 Q Okay. Nowhere in this e-mail does CARD tell the
 18 SSA that they are submitting patients for Medicare
 19 benefits without a diagnosis as a routine
 20 practice, correct?
 21 A Correct.
 22 Q Okay. In terms of policy, if a patient has been
 23 diagnosed by CARD with one of the impairments of
 24 asbestos-related disease due to asbestos exposure,
 25 they qualify for Medicare?

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1 THE VIDEOGRAPHER: The time is 4:27. We
 2 are off the record.
 3 (Break taken.)
 4 THE VIDEOGRAPHER: The time is 4:30. We
 5 are back on the record.
 6 BY MR. DUERK:
 7 Q All right. After a short break, Ms. Hillmann, do
 8 you have Exhibit 85 in front of you?
 9 A I do.
 10 Q Mr. Bechtold referenced this e-mail during your
 11 cross-examination. This is about a patient with
 12 some questions from SSA as to whether or not the
 13 patient has been diagnosed.
 14 Is that a fair representation?
 15 A Yes.
 16 Q Okay. On page 2 does the e-mail from CARD
 17 indicate that this patient has a B read diagnosis?
 18 A To me, I would read it that way, but I am not a
 19 medical expert. I would assume DX means
 20 diagnosis.
 21 Q Okay.
 22 A Yeah.
 23 Q And so if that interpretation is correct, is CARD
 24 saying this patient has a B read diagnosis, but I
 25 need to check on some other information?

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1 A Yes. If it's one of the ones listed within the
 2 checklist and they complete that checklist
 3 following section 1881A of the act, yes.
 4 Q All right. So in terms of Exhibit 83 that
 5 Mr. Bechtold showed you, an e-mail from Sonya --
 6 between Sonya Peterson and Stephanie Moore,
 7 Ms. Peterson says, "If a claimant has been
 8 diagnosed with one of the impairments on that
 9 list, they qualify, so to us, either they are
 10 diagnosed or they aren't."
 11 Did I read that correctly?
 12 A Correct.
 13 Q And so basically, Ms. Hillmann, if a patient has
 14 been diagnosed they are eligible for Medicare, and
 15 if they have not been diagnosed, they aren't
 16 eligible for Medicare?
 17 MR. KAKUK: Objection, scope.
 18 A Correct.
 19 BY MR. DUERK:
 20 Q Okay. Is that a fair interpretation in your mind?
 21 A Yes.
 22 Q Ms. Hillmann, I have no further questions, and I
 23 appreciate your time here today. Thank you.
 24 A Thank you.
 25 MR. BECHTOLD: I am going to do a brief

<p style="text-align: right;">Page 169</p> <p>1 re-cross.</p> <p>2 MR. DUERK: I will object, but go ahead.</p> <p>3 EXAMINATION</p> <p>4 BY MR. BECHTOLD:</p> <p>5 Q If the judge kicks it, he'll kick it.</p> <p>6 So you testified that there is nothing in</p> <p>7 the POMS that qualifies an individual for Medicare</p> <p>8 eligibility based on a B reading alone, correct?</p> <p>9 Do you remember that testimony you just</p> <p>10 gave?</p> <p>11 A Did I just give that testimony?</p> <p>12 MR. KAKUK: The same objection.</p> <p>13 MR. DUERK: Objection, form. Misstates</p> <p>14 the testimony. Go ahead.</p> <p>15 A I think the testimony that I gave was what's in</p> <p>16 HI 00803.50 and it's our instruction to our</p> <p>17 technicians. It states if that checklist is</p> <p>18 completed, you know, section 1, section 2,</p> <p>19 section 3, we are assuming that the physician</p> <p>20 followed section 1881A of the act and provided an</p> <p>21 appropriate diagnosis based on their</p> <p>22 interpretation of that act.</p> <p>23 MR. BECHTOLD: Annie, can you scroll</p> <p>24 back for me to her testimony about nothing in</p> <p>25 POMS?</p>	<p style="text-align: right;">Page 170</p> <p>1 THE COURT REPORTER: In this answer</p> <p>2 right now?</p> <p>3 MR. BECHTOLD: No.</p> <p>4 THE COURT REPORTER: Previous?</p> <p>5 MR. BECHTOLD: Previous.</p> <p>6 THE COURT REPORTER: How far previous</p> <p>7 and during whose examination?</p> <p>8 MR. BECHTOLD: During the beginning of</p> <p>9 Mr. Duerk's examination.</p> <p>10 MR. KAKUK: Of his cross, right, of his</p> <p>11 re-direct?</p> <p>12 MR. BECHTOLD: Of his re-direct.</p> <p>13 MR. KAKUK: Yeah.</p> <p>14 THE COURT REPORTER: Well, let me go to</p> <p>15 it. One moment.</p> <p>16 (Discussion off steno record.)</p> <p>17 (Testimony read back as follows:)</p> <p>18 Question: Nothing in the POMS mentions</p> <p>19 that patients are eligible for Medicare on a</p> <p>20 B read alone, correct?</p> <p>21 Answer: Correct.</p> <p>22 A I agree with that.</p> <p>23 BY MR. BECHTOLD:</p> <p>24 Q Okay. So nothing in POMS says that a person is</p> <p>25 eligible based on a B reading alone?</p>
<p style="text-align: right;">Page 171</p> <p>1 A Correct.</p> <p>2 MR. KAKUK: Objection, scope.</p> <p>3 BY MR. BECHTOLD:</p> <p>4 Q So would you agree that Exhibit 75, the POMS, and</p> <p>5 also Exhibit 142, right? 140?</p> <p>6 MR. DUERK: 75 and 140 are the same.</p> <p>7 BY MR. BECHTOLD:</p> <p>8 Q Yeah. 75 and 140 both indicate that an ARD</p> <p>9 diagnosis established by a diagnostic method</p> <p>10 specified in the law, so for example, if we looked</p> <p>11 on Exhibit 75 and the examples 1, 2 and 3 where</p> <p>12 they state Mr. Brown received an ARD diagnosis</p> <p>13 established by a diagnostic method specified in</p> <p>14 the law or Mr. James received an ARD diagnosis</p> <p>15 established by a diagnostic method specified in</p> <p>16 the law or Ms. Jackson received an ARD diagnosis</p> <p>17 established by a diagnostic method specified in</p> <p>18 the law, so is SSA's interpretation of section</p> <p>19 1881A is that a B reading alone is not a</p> <p>20 diagnostic diagnosis established by a diagnostic</p> <p>21 method as specified in the law?</p> <p>22 MR. KAKUK: Objection, scope.</p> <p>23 MR. DUERK: Objection, form, compound</p> <p>24 and foundation. Go ahead.</p> <p>25 A Can you read that back to me? I'm sorry.</p>	<p style="text-align: right;">Page 172</p> <p>1 (Read back.)</p> <p>2 A I meant his question. I'm sorry.</p> <p>3 THE COURT REPORTER: Isn't that the</p> <p>4 question?</p> <p>5 A Was it the same question?</p> <p>6 THE COURT REPORTER: That's the</p> <p>7 question.</p> <p>8 A Because that doesn't sound the same because you</p> <p>9 asked me --</p> <p>10 Q Go ahead. Finish the question.</p> <p>11 A I'm sorry.</p> <p>12 THE COURT REPORTER: That's okay.</p> <p>13 (Read back.)</p> <p>14 MR. DUERK: The same objections.</p> <p>15 A Again, I can't speak to that. That's outside of</p> <p>16 my purview. I am not a medical expert that</p> <p>17 interprets section 1881A of the act.</p> <p>18 I was asked if that language was within</p> <p>19 this policy section that's given to our</p> <p>20 technicians and I said -- he asked me you would</p> <p>21 say that this language was not within this policy,</p> <p>22 and I agreed and I said correct.</p> <p>23 Q Okay. So your testimony is that the specific</p> <p>24 words "B reading alone" is not found in POMS?</p> <p>25 A It's not found in policy, within this policy that</p>

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1 he asked me about.

2 Q And your testimony isn't meant to have any

3 implication about Medicare eligibility based upon

4 section 1881A?

5 MR. DUERK: Objection, form.

6 A I would have to agree with that because, again,

7 that's outside of my purview and I can't speak to

8 section 1881A of the act.

9 Q Okay. Those are all the questions I have.

10 MR. DUERK: Thank you for your time.

11 Thanks for being here.

12 THE WITNESS: Yeah. Thanks.

13 THE VIDEOGRAPHER: Okay. That concludes

14 today's proceedings. The time is 4:41 and we

15 are off the record.

16 THE COURT REPORTER: Thank you.

17 Mr. Duerk, would you like to purchase the

18 transcript?

19 MR. DUERK: Yes, please.

20 THE COURT REPORTER: And Mr. Bechtold,

21 would you like to purchase?

22 MR. BECHTOLD: Yes.

23 THE COURT REPORTER: Okay.

24 MR. KAKUK: We would like one as well.

25 (Deposition concluded at 4:41 PM.)

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1 STATE OF COLORADO)

2) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER)

4

5 I, Annie Sager, certify that I am a

6 Court Reporter and Notary Public within the

7 State of Colorado; that previous to the

8 commencement of the examination, the deponent

9 was duly sworn to testify to the truth.

10 I further certify that this deposition

11 was taken in shorthand by me at the time and

12 place herein set forth and was thereafter

13 reduced to typewritten form, and that the

14 foregoing constitutes a true and correct

15 transcript.

16 I further certify that I am not related

17 to, employed by, nor of counsel for any of the

18 parties or attorneys herein, nor otherwise

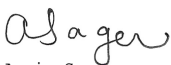
19 interested in the result of the within action.

20 In witness whereof, I have affixed my

21 signature this 30th day of May, 2023.

22 My commission expires June 25, 2023.

23

24 

25 Annie Sager
216 Sixteenth Street, Suite 600
Denver, Colorado 80202

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1 I, HEATHER HILLMANN, do hereby certify

2 that I have read the foregoing transcript and

3 that the same and accompanying amendment sheets,

4 if any, constitute a true and complete record of

5 my testimony.

6

7

8

9 _____

10 Signature of Deponent

11 () No amendments

12 () Amendments attached

13

14

15 Acknowledged before me this _____ day of

16 _____ 2023.

17

18

19 Notary Public: _____

20 My Commission Expires _____

21

22 Seal:

23

24

25

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1 AB LITIGATION SERVICES

2 216 Sixteenth Street, Suite 600

3 Denver, Colorado 80202

4

5 May 30, 2023

6 Michael Kakuk, Assistant U.S. Attorney

7 U.S. Department of Justice

8 United States Attorney's Office

9 901 Front Street, Suite 1100

10 Helena, Montana 59626

11

12 Re: Deposition of Heather Hillmann

13 BNSF vs. CARD

14 Case No. CV-19-40-M-DLC

15

16 The aforementioned deposition is ready for reading and

17 signing. Please attend to this matter by following BOTH of

18 the items indicated below:

19

20 _____ Call 303-296-0017 and arrange with

21 us to read and sign the deposition in our

22 office

23

24 _XXX_ Have the deponent read your copy and sign the

25 signature page and amendment sheets, if

applicable; the signature page is attached

_____ Read the enclosed copy of the deposition and

sign the signature page and amendment sheets,

if applicable; the signature page is attached

XXX WITHIN 30 DAYS OF THE DATE OF THIS LETTER

_____ By _____ due to a trial date of _____

Please be sure the original signature page and amendment

sheets, if any, are SIGNED BEFORE A NOTARY PUBLIC and

returned to AB Litigation Services for filing with the

original deposition. A copy of these changes should also be

forwarded to counsel of record. Thank you.

AB LITIGATION SERVICES

cc: All Counsel

Max Baucus

Vol. 1

07/19/2022

Fisher Court Reporting

Exhibit 2-1

<p>Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF MONTANA</p> <p>3</p> <p>4 BNSF RAILWAY COMPANY, on behalf of</p> <p>5 THE UNITED STATES OF AMERICA,</p> <p>6</p> <p>7 Plaintiff,</p> <p>8</p> <p>9 vs. Cause No. CV-19-40-M-DLC</p> <p>10</p> <p>11 THE CENTER FOR ASBESTOS RELATED</p> <p>12 DISEASE, INC.,</p> <p>13</p> <p>14 Defendant.</p> <p>15</p> <hr/> <p>16 VIDEO DEPOSITION UPON ORAL EXAMINATION OF</p> <p>17 SENATOR MAX BAUCUS</p> <p>18</p> <hr/> <p>19 BE IT REMEMBERED, that the video-taped deposition</p> <p>20 upon oral examination of SENATOR MAX BAUCUS, appearing at</p> <p>21 the instance of the Defendant, was taken at the offices of</p> <p>22 Fisher Court Reporting, 442 E. Mendenhall, Bozeman,</p> <p>23 Montana, on July 19, 2022, beginning at 10:00 a.m.,</p> <p>24 pursuant to Montana Rules of Civil Procedure, before Robyn</p> <p>25 Ori English, Court Reporter - Notary Public.</p>	<p>Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3</p> <p>4 EXAMINATION OF SENATOR MAX BAUCUS BY: PAGE:</p> <p>5</p> <p>6 Mr. Adam Duerk, Esq..... 6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 2</p> <p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 ATTORNEY APPEARING ON BEHALF OF THE</p> <p>4 PLAINTIFF:</p> <p>5</p> <p>6 W. ADAM DUERK</p> <p>7 Knight Nicaastro Mackay, LLC</p> <p>8 283 West Front Street, Suite 203</p> <p>9 Missoula, MT 59802</p> <p>10 duerk@knightnicaastro.com</p> <p>11</p> <p>12 ATTORNEY APPEARING ON BEHALF OF THE</p> <p>13 DEFENDANT:</p> <p>14</p> <p>15 TIMOTHY BECHTOLD</p> <p>16 Bechtold Law Firm, PLLC</p> <p>17 P.O. Box 7051</p> <p>18 Missoula, MT 59807</p> <p>19 tim@bechtoldlaw.net</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 E X H I B I T S</p> <p>2</p> <p>3 DEPOSITION EXHIBITS: PAGE:</p> <p>4</p> <p>5 Previously marked as Exhibits 1 through 5. Re-marked as</p> <p>6 follows:</p> <p>7</p> <p>8 Exhibit 108 Declaration of Senator Max 7</p> <p>9 Baucus</p> <p>10 Exhibit 109 CARD's Statement of Disputed .. 15</p> <p>11 Facts</p> <p>12 Exhibit 110 Congressional Record - 29</p> <p>13 Senate Proceedings and</p> <p>14 Debates of the 111th</p> <p>15 Congress, First Session,</p> <p>16 Saturday, December 19, 2009</p> <p>17 Exhibit 111 CARD's Expert Witness 30</p> <p>18 Disclosure</p> <p>19 Exhibit 112 Congressional Record - 32</p> <p>20 Senate Proceedings and</p> <p>21 Debates of the 111th</p> <p>22 Congress, First Session -</p> <p>23 Monday, December 21, 2009</p> <p>24</p> <p>25</p>

<p>Page 5</p> <p>1 VIDEO OPERATOR: This is the video-recorded and 2 video-conferenced deposition of Max Baucus, taken in the 3 United States District Court for the District of Montana, 4 Cause No. CV-19-40-M-DLC, BNSF Railway Company versus The 5 Center for Asbestos Related Disease, Inc. 6 Today is July 19th, 2022. The time is 7 10:15 a.m. We are present with the witness at the offices 8 of Fisher Court Reporting, at 442 East Mendenhall Street 9 in Bozeman, Montana. The Court Reporter is Robyn Ori 10 English, and the Video Operator is Nicole Tomac of Fisher 11 Court Reporting. The deposition is being taken pursuant 12 to Notice. 13 I would now ask the attorneys to identify 14 themselves, who they represent and whoever else is 15 present. 16 MR. DUERK: Adam Duerk for Relator, BNSF. 17 MR. BECHTOLD: And Tim Bechtold for The Center for 18 Asbestos Related Diseases and with the deponent, Max 19 Baucus. 20 VIDEO OPERATOR: The Court Reporter will now 21 administer the oath. 22 23 24 25</p>	<p>Page 7</p> <p>1 Q. Fair enough. And Senator Baucus, there 2 was a Notice of Deposition in this matter that asked 3 for you to appear and also bring any materials in 4 your file related to this case. And, sir, it's 5 perfectly understandable and acceptable if there is 6 no such file, but I have to cover that. 7 A. Yeah, no, I don't have any file. 8 Q. Okay. In terms of the materials that you 9 reviewed in forming your expert opinions, what 10 materials in this matter did you review? 11 A. Not much, frankly. I went back and just 12 thought about it all and gave it a lot of thought, 13 but that's all I did. 14 Q. All right. Sir, I'll be going through 15 several different documents and pieces of paper 16 during the deposition today. Before I get into any 17 of those deposition exhibits, one of those exhibits 18 will be your signed declaration in this case. I'll 19 put in front of you what we'll mark as Exhibit 1 for 20 purposes of this deposition. 21 22 (Deposition Exhibit No. 1 was marked 23 for identification) 24 25 Q. (By Mr. Duerk) Do you see your</p>
<p>Page 6</p> <p>1 WHEREUPON, the following proceedings were had and 2 testimony taken, to wit. 3 4 5 MAX BAUCUS, 6 called as a witness herein, having been first duly sworn, 7 was examined and testified as follows: 8 9 EXAMINATION 10 11 BY MR. DUERK: 12 Q. Good morning. 13 A. Hi. 14 Q. Would you please state your full legal 15 name for the record? 16 A. Max Sieben Baucus. 17 Q. I'll be referring to you as Senator 18 Baucus throughout the course of this deposition. 19 Senator Baucus, where do you currently 20 reside? 21 A. 257 Blue Roan Lane, Belgrade, Montana. 22 Q. Sir, you've been named as a hybrid expert 23 witness in this case. What did you review in 24 preparation for your deposition today? 25 A. My -- my memory.</p>	<p>Page 8</p> <p>1 declaration in front of you? 2 A. I do. 3 Q. If we could cover a few particulars about 4 it, in terms of that declaration, when was the first 5 time -- first of all, the signature on this 6 declaration is dated -- it appears to be 7 February 11th, 2022; is that correct? 8 A. Yeah. 9 Q. Sir, when did you first have any 10 communication with anyone else about this 11 declaration to the best of your memory? 12 A. Oh, gosh, essentially when I first -- 13 when the -- I saw this just a few days ago, it was 14 mailed to me, but also, frankly, the substance of it 15 was something I asked to be -- to be true in the 16 first place. I mean, I don't -- I didn't get down 17 in the weeds in the details. 18 I knew that -- I worked very hard to 19 get -- to help generally the people of Libby, 20 Montana, because they are just put upon by the Great 21 Basin by the railroad. And among many things that I 22 did to help the people was to assure that they could 23 get screened to determine whether they have 24 asbestos-related diseases. 25 And so I made it very clear to my office</p>

<p>Page 9</p> <p>1 that I wanted the Affordable Care Act to include the</p> <p>2 material that's in this declaration; that is, that</p> <p>3 the -- under the act, the CARD clinic is qualified</p> <p>4 to screen. And it was very, very important to me</p> <p>5 that that be the case.</p> <p>6 Q. And, sir, my question goes specifically</p> <p>7 to the time frame involved in when you first saw</p> <p>8 this declaration. So I'd like to focus my questions</p> <p>9 on that topic.</p> <p>10 A. Yeah, well, I first saw the -- the actual</p> <p>11 declaration recently.</p> <p>12 Q. Okay.</p> <p>13 A. But that's not the point. The point is</p> <p>14 that it's -- it reflects what I believe.</p> <p>15 Q. Okay. I understand that.</p> <p>16 So in terms of when you first saw the</p> <p>17 declaration, I'm assuming, based on your signature</p> <p>18 of February 11th, 2022, you saw this at some point</p> <p>19 before you signed it, correct?</p> <p>20 A. Not before.</p> <p>21 Q. Okay. Did you, yourself, have any role</p> <p>22 in generating this declaration?</p> <p>23 A. That's my intent. That's what I</p> <p>24 believed.</p> <p>25 Q. And here I'm talking about just the nuts</p>	<p>Page 11</p> <p>1 A. I do not.</p> <p>2 Q. Okay. Do you recall any conversations</p> <p>3 with anybody about the possibility of signing this</p> <p>4 declaration?</p> <p>5 A. No, I don't. Well, I don't recall, but</p> <p>6 there's no reason why I should because it's -- it's</p> <p>7 accurate. It is what I believe. So I didn't give</p> <p>8 it much thought.</p> <p>9 Q. Based on other deposition testimony, it's</p> <p>10 my understanding that there was some communication</p> <p>11 between the CARD clinic or those affiliated with the</p> <p>12 CARD clinic and your office to ask if you would sign</p> <p>13 this declaration and serve as a witness in this</p> <p>14 case.</p> <p>15 A. That could be, yeah.</p> <p>16 Q. Okay. Do you recall when those</p> <p>17 conversations --</p> <p>18 A. I don't know.</p> <p>19 Q. -- occurred? Okay.</p> <p>20 When was the last time, to the best of</p> <p>21 your recollection, that you had a conversation with</p> <p>22 Dr. Charles Brad Black?</p> <p>23 A. He asked if I would be willing to be</p> <p>24 deposed.</p> <p>25 Q. Okay.</p>
<p>Page 10</p> <p>1 and bolts of the document itself.</p> <p>2 Sir, did you draft this declaration?</p> <p>3 A. Oh, personally, no.</p> <p>4 Q. Okay.</p> <p>5 A. But I had people working for me draft it.</p> <p>6 Q. Okay.</p> <p>7 A. Because I wanted them to convey my</p> <p>8 wishes.</p> <p>9 Q. All right. And who was involved in</p> <p>10 drafting this declaration?</p> <p>11 A. I could not tell you specifically.</p> <p>12 Q. Okay.</p> <p>13 A. It's -- it's -- all I know -- I know</p> <p>14 specifically is that when the ACA was before us, I</p> <p>15 made it clear to my office that I wanted this -- the</p> <p>16 substance of this to be included in the ACA.</p> <p>17 Q. Understood.</p> <p>18 Prior to signing the declaration, do you</p> <p>19 recall speaking with anyone in particular about the</p> <p>20 substance?</p> <p>21 A. No, I don't. Someone gave it to me and</p> <p>22 said, "Is this accurate?"</p> <p>23 And I said, "Yes, it's accurate."</p> <p>24 Q. Okay. Do you recall who that someone</p> <p>25 was?</p>	<p>Page 12</p> <p>1 A. And that was -- that was a month ago, two</p> <p>2 months ago, something like that.</p> <p>3 Q. All right. Prior to that discussion with</p> <p>4 Dr. Black two months ago about today's deposition,</p> <p>5 when was the next conversation that you had with</p> <p>6 Dr. Black?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. How long has it been -- I'm</p> <p>9 assuming that you had a conversation with Dr. Black</p> <p>10 earlier in time about matters unrelated to this</p> <p>11 deposition?</p> <p>12 A. I've had an infinite number of</p> <p>13 conversations with Dr. Black with many people in</p> <p>14 Libby with many government officials. Nothing has</p> <p>15 been more important -- nothing has been more</p> <p>16 important to me during my 36 years in the United</p> <p>17 States Senate than finding justice for the people of</p> <p>18 Libby.</p> <p>19 Therefore, I've had an infinite number --</p> <p>20 I've had -- I brought secretaries, cabinet</p> <p>21 secretaries to Libby. Dr. Black was probably part</p> <p>22 of all of that. That's just an example, frankly.</p> <p>23 The point is that -- that -- to answer your</p> <p>24 question, yes, many times Dr. Black -- I have total</p> <p>25 confidence and faith in Dr. Black. He's an</p>

<p>Page 13</p> <p>1 excellent physician.</p> <p>2 Q. And the point of my questions and what</p> <p>3 I'm trying to get at is in terms of the</p> <p>4 conversations that you had with Dr. Black or anyone</p> <p>5 else at CARD, what conversations, if any, about this</p> <p>6 lawsuit did you have with Dr. Black?</p> <p>7 A. None.</p> <p>8 Q. Okay.</p> <p>9 A. Other -- other than being sued.</p> <p>10 Q. Okay.</p> <p>11 A. "Hey, do you mind being" -- basically he</p> <p>12 said, "You don't have to do this." You know, "I'm</p> <p>13 not asking you to do this. This is happening. If</p> <p>14 you want to be deposed, that's up to you."</p> <p>15 And I said, "I absolutely want to because</p> <p>16 I want to do anything I possibly can to bring</p> <p>17 justice to the people of Libby, Montana."</p> <p>18 Q. Understood.</p> <p>19 How long was that conversation with</p> <p>20 Dr. Black where he asked if you would be deposed?</p> <p>21 A. About 15 minutes.</p> <p>22 Q. Do you recall Dr. Black sending you any</p> <p>23 written materials either before or after that the</p> <p>24 conversation?</p> <p>25 A. No. Not only do I not recall, he did</p>	<p>Page 15</p> <p>1 Q. Have you reviewed any deposition</p> <p>2 testimony in this case?</p> <p>3 A. I have not.</p> <p>4 Q. Okay. And have you reviewed any exhibits</p> <p>5 to deposition testimony?</p> <p>6 A. No.</p> <p>7 Q. Have you reviewed any EHH Medicare claim</p> <p>8 forms?</p> <p>9 A. No.</p> <p>10 Q. So fair to say, and I think we've covered</p> <p>11 it now, but, Senator, in preparation for your</p> <p>12 declaration and your hybrid expert disclosure in</p> <p>13 this matter, you have reviewed no written documents</p> <p>14 of any kind?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Senator Baucus, I'd like to cover</p> <p>17 just a few basic foundational principles here.</p> <p>18 There have been some facts that are considered</p> <p>19 undisputed in this case, and I'm marking it as</p> <p>20 Deposition Exhibit 2.</p> <p>21</p> <p>22 (Deposition Exhibit No. 2 was marked</p> <p>23 for identification)</p> <p>24</p> <p>25 Q. (By Mr. Duerk) Sir, although the title</p>
<p>Page 14</p> <p>1 not.</p> <p>2 Q. Okay. I want to broaden the question a</p> <p>3 little bit further. Do you recall anyone sending</p> <p>4 you any written materials in anticipation of your</p> <p>5 deposition testimony?</p> <p>6 A. No, no, no.</p> <p>7 Q. Okay. Broadening the question further</p> <p>8 still, do you recall anyone from CARD or anywhere</p> <p>9 else sending you any materials for you to consider</p> <p>10 prior to signing your declaration?</p> <p>11 A. No.</p> <p>12 Q. Okay. And I think we've covered it, and</p> <p>13 I'm sorry to belabor the point, but in terms of</p> <p>14 written materials, have you reviewed the Third</p> <p>15 Amended Complaint in this matter?</p> <p>16 A. No.</p> <p>17 Q. Okay. Have you reviewed the Statement of</p> <p>18 Undisputed Facts in this matter?</p> <p>19 A. I have not.</p> <p>20 Q. Have you reviewed any of the discovery</p> <p>21 requests including the Requests for Production?</p> <p>22 A. No.</p> <p>23 Q. Okay. Have you reviewed any of the</p> <p>24 pleadings in this matter?</p> <p>25 A. No.</p>	<p>Page 16</p> <p>1 of this document, this pleading states that it is</p> <p>2 CARD Statement of Disputed Facts, there are</p> <p>3 individual facts listed here with a response from</p> <p>4 CARD in bold face as to whether the fact mentioned</p> <p>5 is disputed or undisputed.</p> <p>6 Do you see Exhibit 2 in front of you?</p> <p>7 A. I do.</p> <p>8 Q. Okay. I'd like to read just a few of</p> <p>9 these undisputed facts and see whether based on your</p> <p>10 experience and personal knowledge you would agree,</p> <p>11 okay?</p> <p>12 A. All right.</p> <p>13 Q. Statement of Fact 1: "The Environmental</p> <p>14 Health Hazards provisions of the Affordable Care Act</p> <p>15 found at Section 1881A address Medicare coverage for</p> <p>16 individuals exposed to environmental health</p> <p>17 hazards."</p> <p>18 This states, "Undisputed."</p> <p>19 Would you agree that the Affordable Care</p> <p>20 Act in the Environmental Health Hazards provision</p> <p>21 relates to individuals exposed to environmental</p> <p>22 health hazards?</p> <p>23 A. To the best of my knowledge.</p> <p>24 Q. "According to language found in this</p> <p>25 section of the Affordable Care Act, for purposes of</p>

<p>Page 17</p> <p>1 eligibility for benefits under this title an</p> <p>2 individual must be determined to be an environmental</p> <p>3 exposure affected individual."</p> <p>4 "Undisputed."</p> <p>5 Would you agree?</p> <p>6 A. Yep. If that's in the -- if that's in</p> <p>7 the statute.</p> <p>8 Q. All right.</p> <p>9 A. Is it in there?</p> <p>10 Q. It is in there, and it is considered</p> <p>11 undisputed.</p> <p>12 A. Okay, if it's in there.</p> <p>13 Q. All right.</p> <p>14 A. No reason to dispute it.</p> <p>15 Q. Okay. 3, "An environmental exposure</p> <p>16 affected individual means any individual who is</p> <p>17 diagnosed with one or more conditions."</p> <p>18 "Undisputed."</p> <p>19 Would you agree?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. "Those conditions are:</p> <p>22 Asbestosis, pleural thickening or pleural plaques as</p> <p>23 established by interpretation by a 'B Reader'</p> <p>24 qualified physician of a plain chest x-ray or</p> <p>25 interpretation of a computed tomographic radiograph</p>	<p>Page 19</p> <p>1 Section 1881 of the Affordable Care Act that creates</p> <p>2 an exception for a patient to be eligible for</p> <p>3 Medicare benefits without a diagnosis."</p> <p>4 "Undisputed."</p> <p>5 Would you agree?</p> <p>6 A. Yep.</p> <p>7 Q. "Black's Law defines 'diagnosis' as: 'A</p> <p>8 medical term, meaning the discovery of the source of</p> <p>9 a patient's illness or the determination of the</p> <p>10 nature of his disease from a study of its</p> <p>11 symptoms.'"</p> <p>12 "Undisputed."</p> <p>13 Do you agree?</p> <p>14 A. I've never -- I haven't looked at my</p> <p>15 Black's Law dictionary in 40 years. I have no idea.</p> <p>16 Q. Fair enough. Are there any facts that</p> <p>17 you're aware of as you sit here today that would</p> <p>18 lead you to dispute fact No. 7?</p> <p>19 A. No.</p> <p>20 Q. Okay. This next one references CARD's</p> <p>21 website. And, sir, I'll probably ask you some</p> <p>22 predicate questions here. But have you ever seen</p> <p>23 CARD's website that you can recall?</p> <p>24 A. No, no.</p> <p>25 Q. Okay. I'll phrase it this way: "In</p>
<p>Page 18</p> <p>1 of the chest by a qualified physician, as determined</p> <p>2 by the Secretary; or, two, such other diagnostic</p> <p>3 standards as the Secretary specifies, except that</p> <p>4 this clause shall not apply to pleural thickening or</p> <p>5 pleural plaques unless there are symptoms or</p> <p>6 conditions requiring medical treatment as a result</p> <p>7 of these diagnoses. Mesothelioma, or malignancies</p> <p>8 of the lung, colon, rectum, larynx, stomach,</p> <p>9 esophagus, pharynx, or ovary; any other diagnosis</p> <p>10 which the Secretary, in consultation with the</p> <p>11 Commissioner of Social Security, determines is an</p> <p>12 asbestos-related medical condition, as established</p> <p>13 by such diagnostic standards as the Secretary</p> <p>14 specifies."</p> <p>15 That fact is "Undisputed."</p> <p>16 Would you agree?</p> <p>17 A. As far as I can tell.</p> <p>18 Q. "The language in the EHH provisions of</p> <p>19 the Affordable Care Act uses the terms 'diagnosis,'</p> <p>20 'established by,' and 'interpretation' when</p> <p>21 describing environmental exposed individuals."</p> <p>22 "Undisputed."</p> <p>23 Would you agree?</p> <p>24 A. To the best of my knowledge.</p> <p>25 Q. Okay. "There is no provision stated in</p>	<p>Page 20</p> <p>1 order to be eligible for Medicare benefits under the</p> <p>2 Affordable Care Act, an individual must have a</p> <p>3 diagnosis of an asbestos-related disease."</p> <p>4 Would you agree?</p> <p>5 MR. BECHTOLD: Foundation.</p> <p>6 THE WITNESS: Would I agree?</p> <p>7 Q. (By Mr. Duerk) Yes.</p> <p>8 A. I mean, it's -- "According to CARD's" --</p> <p>9 I don't know. I haven't seen it.</p> <p>10 Q. Okay.</p> <p>11 A. So how -- I can't respond. I haven't</p> <p>12 seen it.</p> <p>13 Q. And that's why I'm phrasing it just this</p> <p>14 way. Regardless of whether or not CARD's website</p> <p>15 says that an individual must have a diagnosis of an</p> <p>16 asbestos-related disease in order to be eligible for</p> <p>17 Medicare, would you agree that in order to be</p> <p>18 eligible for Medicare benefits under the Affordable</p> <p>19 Care Act an individual must have a diagnosis of an</p> <p>20 asbestos-related disease?</p> <p>21 A. To the best of my knowledge, yes.</p> <p>22 Q. Okay. Now, again, the next question</p> <p>23 starts with the language, "According to CARD." So</p> <p>24 I'm going to change this question just to see if</p> <p>25 you'd agree.</p>

<p>Page 21</p> <p>1 Senator Baucus, would you agree that the</p> <p>2 purpose of the Environmental Health Hazard</p> <p>3 provisions in the Affordable Care Act was to provide</p> <p>4 Medicare benefits for people who were exposed to</p> <p>5 Libby asbestos; not to provide Medicare benefits to</p> <p>6 people who are not sick?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Sir, you're welcome to review</p> <p>9 these if you would like. However, I'll turn away</p> <p>10 from this document as a basic line of questioning.</p> <p>11 But based on your understanding of the Affordable</p> <p>12 Care Act and your involvement in the Affordable Care</p> <p>13 Act, is it your understanding that CARD's purpose</p> <p>14 was to diagnosis individuals with asbestos-related</p> <p>15 disease and where those patients were diagnosed to</p> <p>16 submit them for Medicare benefits if they were</p> <p>17 eligible?</p> <p>18 A. Generally correct, yeah.</p> <p>19 Q. Okay. And consistent with what we've</p> <p>20 been discussing here, it was not the purpose of the</p> <p>21 Affordable Care Act, based on your understanding, to</p> <p>22 allow people who were not sick to claim Medicare</p> <p>23 eligibility --</p> <p>24 A. Correct.</p> <p>25 Q. -- for life, correct?</p>	<p>Page 23</p> <p>1 A. -- come up with something.</p> <p>2 Q. Yep, you bet.</p> <p>3 A. Just out of the blue, this is the first</p> <p>4 time anybody's referenced it in a long time. So</p> <p>5 this is the judiciary committee. This is a huge,</p> <p>6 big document.</p> <p>7 Q. It is. And rather than having you -- or</p> <p>8 asking you to try to refresh your recollection over</p> <p>9 a very large document, I'll say at the outset that</p> <p>10 this piece of legislation had what I'll label fairly</p> <p>11 extensive history in Congress. It appears that this</p> <p>12 bill was discussed and went up for hearing multiple</p> <p>13 times between September 25th, 2002 and June of 2005.</p> <p>14 I'm seeing half a dozen committee meetings and</p> <p>15 hearings about this bill. So I don't want to ambush</p> <p>16 you with what amounts to an Encyclopedia Britannica</p> <p>17 full of information.</p> <p>18 A. It's pretty extensive here.</p> <p>19 Q. It is very -- it is very extensive. If I</p> <p>20 describe it generally in a way that sounds accurate</p> <p>21 to you, maybe that might help speed things along.</p> <p>22 A. This is in the judiciary committee.</p> <p>23 Q. Okay.</p> <p>24 A. I can just tell by looking at it that's</p> <p>25 what it says.</p>
<p>Page 22</p> <p>1 A. Correct.</p> <p>2 Q. Thank you.</p> <p>3 I'd like to talk about your involvement,</p> <p>4 Senator Baucus, in two pieces of legislation: not</p> <p>5 only the Affordable Care Act and the EHH provisions</p> <p>6 in the act, but also the Fair Act or the Fairness In</p> <p>7 Asbestos Injury Resolution Act of 2005.</p> <p>8 I recognize that you've signed the</p> <p>9 declaration about provisions, the EHH provisions in</p> <p>10 the Affordable Care Act.</p> <p>11 In terms of The Fairness in Asbestos</p> <p>12 Injury Resolution Act, do you recall having</p> <p>13 involvement in that particular piece of legislation?</p> <p>14 A. I don't at this moment, but, my gosh,</p> <p>15 that was what? This is, what, 2022? It was 18</p> <p>16 years ago. I'd have to talk to my staff.</p> <p>17 Q. And I'm happy to --</p> <p>18 A. I have no -- it sounds like something I'd</p> <p>19 do, but I would have to stop and talk to my staff.</p> <p>20 Q. Okay. Just as you sit here today, what</p> <p>21 can you recall about The Fairness in Asbestos Injury</p> <p>22 Resolution Act?</p> <p>23 A. Well, if you give the provisions to me, I</p> <p>24 can look at it and be able to --</p> <p>25 Q. Sure.</p>	<p>Page 24</p> <p>1 Q. Yep, yep. In terms of the general goal</p> <p>2 of The Fairness in Asbestos Injury Resolution Act or</p> <p>3 the Fair Act, Senator, is it fair to say that in the</p> <p>4 Senate, you and your colleagues were trying to</p> <p>5 address a system or a method of addressing the</p> <p>6 asbestos litigation difficulties in the United</p> <p>7 States by coming up with some sort of fund to ensure</p> <p>8 that people who were sickened by asbestos had a</p> <p>9 remedy that would help them with their personal and</p> <p>10 medical difficulties caused by asbestos exposure?</p> <p>11 A. I --</p> <p>12 MR. BECHTOLD: Foundation.</p> <p>13 THE WITNESS: What do you mean "foundation"?</p> <p>14 Q. (By Mr. Duerk) I think, not to speak for</p> <p>15 Mr. Bechtold, but he is preserving the record with</p> <p>16 some objections. By "foundation," I think he is</p> <p>17 suggesting that maybe you don't know what I'm</p> <p>18 talking about?</p> <p>19 A. Because you're right.</p> <p>20 Q. And that's what I'm trying to get at.</p> <p>21 A. Basically, that's right. I mean, I</p> <p>22 was -- I was part of anything to help people in</p> <p>23 Libby.</p> <p>24 Q. Yes.</p> <p>25 A. I was not on this committee.</p>

<p>Page 25</p> <p>1 Q. Okay.</p> <p>2 A. Just by looking at it. And so I was</p> <p>3 generally part of efforts to help people in Libby,</p> <p>4 but I cannot speak with -- I cannot speak with any</p> <p>5 specificity about this.</p> <p>6 Q. All right. Senator Baucus, do you recall</p> <p>7 whether you were co-sponsor of the Fair Act or</p> <p>8 any --</p> <p>9 A. I don't.</p> <p>10 Q. -- of the provisions of the Fair Act?</p> <p>11 A. No.</p> <p>12 Q. And that's okay.</p> <p>13 A. I don't know.</p> <p>14 Q. Sir, I'll represent to you that as part</p> <p>15 of the Fair Act, there is some mention in the record</p> <p>16 of your name and some observations that you had</p> <p>17 about it. Does that sound accurate to you?</p> <p>18 A. I'd have to go back and look at the</p> <p>19 record.</p> <p>20 Q. Understood.</p> <p>21 A. I'd have to, but it could be.</p> <p>22 Q. And to be clear, it's not my intent to</p> <p>23 try to summarize a 30-plus year career and ambush</p> <p>24 you with facts that you may not remember here. That</p> <p>25 said, there are some provisions in the Fair Act that</p>	<p>Page 27</p> <p>1 asbestos trust?</p> <p>2 A. I don't.</p> <p>3 Q. Okay.</p> <p>4 A. I was -- I'm not on this committee. I</p> <p>5 was focused much more on -- much more on Libby. As</p> <p>6 I look -- as I page through this, this is more</p> <p>7 general.</p> <p>8 Q. All right.</p> <p>9 A. Asbestos generally, it's not -- this is</p> <p>10 not just Libby.</p> <p>11 Q. That's correct.</p> <p>12 A. And my focus was Libby.</p> <p>13 Q. Yep. Understood.</p> <p>14 Is it fair to say that the Affordable</p> <p>15 Care Act also was very, very general, and the</p> <p>16 Affordable Care Act also had a special section on</p> <p>17 Libby, Montana?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. It's general, but there's a special</p> <p>21 section on Libby. That's correct.</p> <p>22 Q. And, sir, I'll represent to you that</p> <p>23 similar to the Affordable Care Act, the Fair --</p> <p>24 Fairness in Asbestos Injury Resolution Act of 2005</p> <p>25 also has special Libby provisions that I believe you</p>
<p>Page 26</p> <p>1 I would like to cover with you.</p> <p>2 A. It's going to be hard because I don't</p> <p>3 remember the Act.</p> <p>4 Q. Okay.</p> <p>5 A. Good luck.</p> <p>6 Q. All right. I'll represent to you the</p> <p>7 Fair Act attempted to come up with some medical</p> <p>8 criterion and exposure criterion for</p> <p>9 asbestos-related disease to determine whether or not</p> <p>10 individuals would be eligible for the trust funds</p> <p>11 set aside for people exposed to asbestos, who</p> <p>12 contracted asbestos-related disease. Does any of</p> <p>13 this sound familiar?</p> <p>14 MR. BECHTOLD: Foundation and form of the question.</p> <p>15 THE WITNESS: I was going to say, not really.</p> <p>16 Q. (By Mr. Duerk) All right. Sir, do you</p> <p>17 recall any of these committee hearings where you</p> <p>18 made statements in support of certain provisions</p> <p>19 under the Fair Act that would have established a</p> <p>20 fund for people affected by asbestos?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. Sir, do you recall any statements</p> <p>23 you made during the discussions about the Fair Act</p> <p>24 that would have provided antifraud provisions to</p> <p>25 ensure that people didn't take advantage of the</p>	<p>Page 28</p> <p>1 advocated for because of asbestos exposure in</p> <p>2 Northwest Montana.</p> <p>3 A. It could be. It could be.</p> <p>4 Q. Okay.</p> <p>5 A. It was a general act.</p> <p>6 Q. Yes, understood. All right. Thank you,</p> <p>7 sir.</p> <p>8 Turning from the Fair Act to the</p> <p>9 Affordable Care Act, your purpose in advocating for</p> <p>10 EHH provisions in the Affordable Care Act was to</p> <p>11 make sure that people who were sick from Libby</p> <p>12 asbestos got a shot at Medicare eligibility,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. All right. And I think as we've</p> <p>16 discussed, was it your intent to make sure that</p> <p>17 anyone diagnosed with asbestos-related disease in</p> <p>18 Libby would be eligible for Medicare benefits?</p> <p>19 A. Uh-huh.</p> <p>20 Q. I'll represent to you that the Fair Act</p> <p>21 has some antifraud provisions or mention of</p> <p>22 antifraud provisions in it. Was it your intent to</p> <p>23 ensure that the Affordable Care Act also had some</p> <p>24 antifraud provisions in it?</p> <p>25 A. Not to my recollection.</p>

<p>Page 29</p> <p>1 Q. Okay.</p> <p>2 A. Didn't focus on that. It may have. It's</p> <p>3 a huge Act. I had 10 staffers writing it. So it's</p> <p>4 a big document.</p> <p>5</p> <p>6 (Deposition Exhibit No. 3 was marked</p> <p>7 for identification)</p> <p>8</p> <p>9 Q. (By Mr. Duerk) Senator Baucus, I'm</p> <p>10 marking Deposition Exhibit 3 in this case. Sir, do</p> <p>11 you recall that certain excerpts from the</p> <p>12 congressional record were referenced in your expert</p> <p>13 disclosure in this case?</p> <p>14 A. What is the question?</p> <p>15 Q. Sure. Were you aware that certain</p> <p>16 records -- certain excerpts from the congressional</p> <p>17 record were referenced in relation to your expert</p> <p>18 disclosure in this case?</p> <p>19 MR. BECHTOLD: Form of the question. Mr. Baucus did</p> <p>20 not do an expert disclosure.</p> <p>21 THE WITNESS: Again, this is all -- it's interesting</p> <p>22 that I have to go back and review it. It's the first I've</p> <p>23 seen this.</p> <p>24 Q. (By Mr. Duerk) All right. Sir, were</p> <p>25 you --</p>	<p>Page 31</p> <p>1 Q. All right. I'm sorry. That's why I just</p> <p>2 said please turn to the third page.</p> <p>3 A. Third page?</p> <p>4 Q. Do you see your name here?</p> <p>5 A. I do.</p> <p>6 Q. Okay. It says, "CARD also discloses the</p> <p>7 following hybrid expert witnesses."</p> <p>8 A. Right, yep.</p> <p>9 Q. Okay. No. 1 there is the Honorable Max</p> <p>10 Baucus. The final sentence here reads, "Ambassador</p> <p>11 Baucus' Declaration and excerpts from the</p> <p>12 Congressional Record, attached here, contain his</p> <p>13 expected testimony."</p> <p>14 Did I read that sentence correctly?</p> <p>15 A. You've read it correctly.</p> <p>16 Q. Okay. Prior to your deposition today and</p> <p>17 prior to filling out your declaration in this</p> <p>18 matter, did you review any excerpts from the</p> <p>19 Congressional Record?</p> <p>20 A. No, I did not.</p> <p>21 Q. All right. Now I understand why there's</p> <p>22 the disconnect. So I apologize, sir. I am</p> <p>23 referencing a few excerpts of the Congressional</p> <p>24 Record that are referenced by CARD's Expert</p> <p>25 Disclosure.</p>
<p>Page 30</p> <p>1 A. It's not like I can't relate to this. I</p> <p>2 would have to study it.</p> <p>3 Q. All right.</p> <p>4 A. Probably bring back some memories. I</p> <p>5 haven't seen it yet, so I can't respond.</p> <p>6</p> <p>7 (Deposition Exhibit No. 4 was marked</p> <p>8 for identification)</p> <p>9</p> <p>10 Q. (By Mr. Duerk) If we can mark Exhibit 4</p> <p>11 in this case. Do you see CARD's Expert Witness</p> <p>12 Disclosure in front of you?</p> <p>13 A. Yes, I do.</p> <p>14 Q. If you would turn to the third page of</p> <p>15 CARD's Expert Witness Disclosure. Do you see your</p> <p>16 name there?</p> <p>17 A. I do.</p> <p>18 Q. In terms of this disclosure, in the last</p> <p>19 sentence on page 3, it says, "Ambassador Baucus'</p> <p>20 Declaration and excerpts from the Congressional</p> <p>21 Record" --</p> <p>22 A. Page 3?</p> <p>23 Q. Yes. Page 3 under your name.</p> <p>24 A. Well, first of all, these aren't</p> <p>25 numbered.</p>	<p>Page 32</p> <p>1 It was my understanding -- or my</p> <p>2 assumption, rather, that you had seen these before,</p> <p>3 so I apologize.</p> <p>4 A. No, I have not.</p> <p>5 Q. If we could look at what's been marked as</p> <p>6 Exhibit 3. Do you see an excerpt from the</p> <p>7 Congressional Record dated Saturday, December 19th,</p> <p>8 2009?</p> <p>9 A. On page 1?</p> <p>10 Q. Yes.</p> <p>11 A. It says, "Sunday, December 19" at the</p> <p>12 top.</p> <p>13 Q. Okay. All right. And you had not</p> <p>14 reviewed this prior to your deposition today?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay.</p> <p>17 A. First I've seen it.</p> <p>18 Q. All right.</p> <p>19 MR. DUERK: If you could mark Exhibit 5.</p> <p>20</p> <p>21 (Deposition Exhibit No. 5 was marked</p> <p>22 for identification)</p> <p>23</p> <p>24 THE WITNESS: It's awfully complicated. When Donald</p> <p>25 Trump was trying to review the Affordable Care Act, you</p>

<p>Page 33</p> <p>1 probably saw that he complained how complicated it is. 2 And it is true, I've seen -- I don't know anything I've 3 experienced that is more complicated than the wording of 4 the Affordable Care Act. So I'd have to go back and look 5 at all the different parts if you want me -- if you want 6 me to try to refresh my recollection, but this is the 7 first I've seen of this.</p> <p>8 Q. Okay. Turning to Exhibit 5 in front of 9 you, do you see another excerpt from the 10 Congressional Record --</p> <p>11 A. I do.</p> <p>12 Q. -- dated Monday, December 21st, 2009?</p> <p>13 A. Yep.</p> <p>14 Q. Okay. And prior to your deposition 15 today, had you seen or reviewed this excerpt of the 16 Congressional Record?</p> <p>17 A. Nope. First time I've seen it.</p> <p>18 Q. Okay. What I'd like to do is turn to 19 certain sections of Exhibit 5. Do you see the first 20 highlighted section in this exhibit?</p> <p>21 A. How many pages in would that be?</p> <p>22 Q. I think just a few.</p> <p>23 A. There we are.</p> <p>24 Q. All right. What is the first sentence in 25 Exhibit 5 on this page?</p>	<p>Page 35</p> <p>1 A. I did not. It says stuff which I agree 2 with.</p> <p>3 Q. Okay.</p> <p>4 A. W.R. Grace belched lots of stuff up, 5 belched 5,000 pounds of asbestos in the air around 6 Libby. That's not a good thing.</p> <p>7 Q. I understand that. In terms of --</p> <p>8 A. I want to make sure you do. That's where 9 I'm coming from. You know, I don't know if you 10 really understand. There is nothing --</p> <p>11 Q. Sir -- sorry, I have not yet asked a 12 question.</p> <p>13 A. I can't talk?</p> <p>14 Q. Not until the question has been posed.</p> <p>15 A. Okay.</p> <p>16 Q. That's what a deposition is.</p> <p>17 A. I'm sorry.</p> <p>18 Q. That's okay. That's okay.</p> <p>19 Sir, following up on whether or not I 20 understand what's going on in Libby, we can both 21 agree that before an expert or a witness shares 22 their opinions about a matter, they need to be armed 23 with all of the facts; is that fair?</p> <p>24 A. Well, I'm not -- I'm not here as an 25 expert witness, am I?</p>
<p>Page 34</p> <p>1 A. What -- what does it say?</p> <p>2 Q. Yes.</p> <p>3 A. The top or what do I say? What's your 4 question?</p> <p>5 Q. First of all, do you see your name 6 indicated here?</p> <p>7 A. I do.</p> <p>8 Q. All right. Does this excerpt from the 9 Congressional Record show what you were saying on 10 the -- in Congress on this day December 19th, 2009?</p> <p>11 A. I cannot tell you.</p> <p>12 Q. Okay.</p> <p>13 A. I don't know for sure.</p> <p>14 Q. All right.</p> <p>15 A. I would have to put all of this back into 16 context again. Just -- just to pull something out 17 way back then -- it's a long -- and it's been years 18 ago -- without my reviewing it, it's hard for me to 19 respond to it.</p> <p>20 Q. Understood. And in terms of your 21 preparation for your declaration and your expert 22 hybrid opinions in this case, you do not recall 23 reviewing this particular testimony?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Thank you.</p>	<p>Page 36</p> <p>1 Q. Sir, that's how you've been disclosed.</p> <p>2 A. You just used the word "hybrid." I don't 3 know what that means.</p> <p>4 Q. Okay.</p> <p>5 A. What does "hybrid" mean?</p> <p>6 Q. I can't testify or answer questions here 7 today, so I want to be mindful of the rules.</p> <p>8 A. Okay. So why don't you ask the question 9 again.</p> <p>10 Q. Okay. Sir, in order to have meaningful 11 testimony --</p> <p>12 A. Right.</p> <p>13 Q. -- a witness must be armed with facts, 14 fair?</p> <p>15 A. Generally.</p> <p>16 Q. Okay. Is there a situation that you can 17 imagine where it wouldn't be important for a witness 18 to know the facts of a case?</p> <p>19 A. No.</p> <p>20 Q. Okay. So would you agree that in order 21 to offer any opinions about any matter, it's 22 important for a witness to be equipped with the 23 facts, fair?</p> <p>24 A. Yeah.</p> <p>25 Q. And, sir, I am not meaning to suggest in</p>

<p>Page 37</p> <p>1 any way that you are not equipped with the facts of</p> <p>2 what happened with legislation related to Libby,</p> <p>3 Montana. You have a very clear record of your</p> <p>4 involvement there.</p> <p>5 What I am addressing is that in terms of</p> <p>6 this particular legal case, you have not reviewed</p> <p>7 any of the complaints that have been drafted by</p> <p>8 Relator about the CARD clinic here, correct?</p> <p>9 MR. BECHTOLD: Asked and answered.</p> <p>10 THE WITNESS: The complaints?</p> <p>11 Q. (By Mr. Duerk) Correct.</p> <p>12 A. I've -- I've -- I have what which is in</p> <p>13 front of me; the declaration, that's what I have.</p> <p>14 Q. All right. Outside of that declaration,</p> <p>15 you have not reviewed the Third Amended Complaint?</p> <p>16 A. I have not.</p> <p>17 MR. BECHTOLD: Asked and answered.</p> <p>18 THE WITNESS: Yeah, it has been answered.</p> <p>19 Q. (By Mr. Duerk) All right. Sir, in terms</p> <p>20 of claims for Medicare coverage in Libby, based on</p> <p>21 the EHH provisions in the Affordable Care Act, I</p> <p>22 think we've covered most of this, but you would</p> <p>23 agree that your intent in the Senate was to provide</p> <p>24 eligibility for Medicare benefits for people who had</p> <p>25 a diagnosis of asbestos-related disease, correct?</p>	<p>Page 39</p> <p>1 what they should be doing.</p> <p>2 And we're talking about people in Libby.</p> <p>3 People in Libby, Montana, are way out in the corner</p> <p>4 of Montana. They're not in -- in the big city. And</p> <p>5 they were taken advantage of. No question. And</p> <p>6 looking for remedies, looking for help.</p> <p>7 Let me just tell you that I'm just --</p> <p>8 I'll just finish answering your question about the</p> <p>9 need for Medicare benefits. Because I'll be</p> <p>10 damned -- when I met Les Skramstad in the living</p> <p>11 room of Gayla Benefield in Libby -- in Libby,</p> <p>12 Montana, he -- I was clear how they needed benefits.</p> <p>13 They weren't getting them. They weren't getting</p> <p>14 them.</p> <p>15 And I said to Les, "There's nothing more</p> <p>16 important to me to make sure that justice is brought</p> <p>17 to the people of Libby, Montana."</p> <p>18 And he said, "Senator, many people have</p> <p>19 said that to us, and nobody's come through, and I'm</p> <p>20 going to be watching you."</p> <p>21 And he didn't have to watch me because I</p> <p>22 knew I was going to do it anyway.</p> <p>23 So to answer your question, absolutely.</p> <p>24 It's very important that they get Medicare benefits</p> <p>25 because the company was not giving the benefits.</p>
<p>Page 38</p> <p>1 A. That's correct. I worked hard on that.</p> <p>2 It was very hard for me to get that. I mean, for</p> <p>3 many years I tried to get the U.S. government to</p> <p>4 declare a -- a health emergency for Libby, and they</p> <p>5 would not even though EPA Administrator Christie</p> <p>6 Whitman was very much in favor of it several years</p> <p>7 ago. I talked with her about it extensively. And</p> <p>8 she agreed, as an administrator -- administrator</p> <p>9 should have the power to declare an emergency which</p> <p>10 would trigger Medicare benefits to eligible folks in</p> <p>11 Libby.</p> <p>12 But that was turned down by Andy Card at</p> <p>13 the White House. It was only when Obama was elected</p> <p>14 President, I went to Secretary Sebelius and EPA</p> <p>15 Administrator Lisa Jackson, and she agreed that</p> <p>16 there should be a declaration in this matter for</p> <p>17 Libby, and I was so relieved.</p> <p>18 And so as part of that, I want to make</p> <p>19 sure that the people actually received the benefits</p> <p>20 even though the declaration was given. And in this</p> <p>21 case, we're talking here about the provisions in the</p> <p>22 Affordable Care Act with respect to screening.</p> <p>23 Because I was very concerned that there would be</p> <p>24 bureaucratic delays, maybe skullduggery, the company</p> <p>25 would -- people just don't like to do what -- often</p>	<p>Page 40</p> <p>1 Q. And in turn --</p> <p>2 A. Since the company is not giving benefits,</p> <p>3 someone had to give them benefits.</p> <p>4 Q. And in terms of that company, Les</p> <p>5 Skramstad worked for W.R. Grace?</p> <p>6 A. That's correct.</p> <p>7 Q. Sir, in terms of Les Skramstad, you met</p> <p>8 with Mr. Skramstad multiple times?</p> <p>9 A. Correct.</p> <p>10 Q. And over the course of several years, you</p> <p>11 saw Mr. Skramstad's medical decline due to</p> <p>12 asbestos-related disease?</p> <p>13 A. Correct.</p> <p>14 Q. Mr. Skramstad had asbestosis; is that</p> <p>15 correct?</p> <p>16 A. I don't know what it was, but he was</p> <p>17 sick.</p> <p>18 Q. Mr. Skramstad -- and I believe your</p> <p>19 statements on the Senate floor bear this out -- but</p> <p>20 Mr. Skramstad worked for W.R. Grace and would come</p> <p>21 home with what was called take-home dust on his</p> <p>22 overall?</p> <p>23 A. That's correct.</p> <p>24 Q. And that take-home dust sickened</p> <p>25 Mr. Skramstad, correct?</p>

<p>Page 41</p> <p>1 A. That's my understanding.</p> <p>2 Q. All right. Is there any question in your</p> <p>3 mind that Mr. Skramstad suffered from an</p> <p>4 asbestos-related disease?</p> <p>5 A. No.</p> <p>6 Q. Your intent in terms of putting these EHH</p> <p>7 provisions into the Affordable Care Act was to</p> <p>8 protect individuals like Mr. Skramstad who had been</p> <p>9 exposed to Libby amphibole and doctors determined to</p> <p>10 have an asbestos-related disease, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And one of the provisions drafted</p> <p>13 into the Affordable Care Act is to enshrine those</p> <p>14 protections for people like Les Skramstad by making</p> <p>15 it clear that if someone has a diagnosis of an</p> <p>16 asbestos-related disease, that they're sick from</p> <p>17 exposure to Libby asbestos, they are Medicare</p> <p>18 eligible?</p> <p>19 A. Whoever they are. Anybody that fits that</p> <p>20 description --</p> <p>21 Q. All right.</p> <p>22 A. -- including Les and anybody else.</p> <p>23 Les died, as you know, because of this,</p> <p>24 and his wife died and his kids died. And it's</p> <p>25 just -- so it's not just Les. It's other people in</p>	<p>Page 43</p> <p>1 A. Yes.</p> <p>2 Q. Is it also true that Christine Todd</p> <p>3 Whitman, Kathleen Sebelius, the others that you</p> <p>4 mentioned, to the best of your understanding, like</p> <p>5 you, were not trying to just give everyone in Libby</p> <p>6 a free pass. You were not drafting legislation that</p> <p>7 would just make everybody in Libby, Montana,</p> <p>8 Medicare eligible?</p> <p>9 A. Correct.</p> <p>10 Q. So if somebody lived in Libby but they</p> <p>11 weren't sick, it wasn't your intent to draft a law</p> <p>12 that would give them a Medicare free card for life</p> <p>13 even though they didn't have asbestos-related</p> <p>14 disease?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Earlier, when I was talking about</p> <p>17 the Fair Act and some of its similarities to the EHH</p> <p>18 provisions in the Affordable Care Act, I was</p> <p>19 talking -- I was asking you some questions about</p> <p>20 antifraud provisions.</p> <p>21 Sir, it was never your intent to make it</p> <p>22 easier for anyone to defraud the Medicare program</p> <p>23 based on provisions that you had a hand in passing?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p>
<p>Page 42</p> <p>1 the community.</p> <p>2 Q. Understood. I know that this is --</p> <p>3 A. And even across the country it had --</p> <p>4 exposed to asbestos.</p> <p>5 Q. I understand that this bill was not only</p> <p>6 for Mr. Skramstad.</p> <p>7 A. Correct.</p> <p>8 Q. I understand that this bill --</p> <p>9 A. It's for the people of Libby primarily.</p> <p>10 Q. Yep, who were exposed to Libby --</p> <p>11 A. And I represented the state of Montana,</p> <p>12 and I can do all I can for the people in the state</p> <p>13 of Montana, including people who have suffered so</p> <p>14 much and have no other remedy, frankly, but for me.</p> <p>15 Q. Understood.</p> <p>16 A. If it were not for me, those people would</p> <p>17 still be suffering.</p> <p>18 Q. Understood.</p> <p>19 In terms of Christine Todd Whitman,</p> <p>20 Kathleen Sebelius, and the others that you mentioned</p> <p>21 earlier in your testimony, is it your understanding</p> <p>22 that they, like you, wanted to make sure that they</p> <p>23 were providing protection from people who are</p> <p>24 suffering from asbestos-related disease due to</p> <p>25 exposure to Libby amphibole?</p>	<p>Page 44</p> <p>1 A. Don't want fraud.</p> <p>2 Q. Yep.</p> <p>3 A. Fraud's not a good thing.</p> <p>4 Q. I think we can all agree --</p> <p>5 A. We don't like fraud.</p> <p>6 Q. -- fraud's not a good thing.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. In terms of this case, you have</p> <p>9 not seen any documents outlining the allegations of</p> <p>10 fraud against the CARD clinic?</p> <p>11 A. No, I have not.</p> <p>12 Q. Okay. Regardless of who is behind a</p> <p>13 scheme to defraud the federal government, you would</p> <p>14 be concerned about the potential of that fraudulent</p> <p>15 activity, fair?</p> <p>16 A. Well, I don't -- I'd be concerned about</p> <p>17 fraud. It would have to be proven.</p> <p>18 Q. Right. And in terms of any of the</p> <p>19 evidence in this case related to fraudulent</p> <p>20 activity, you have not reviewed that evidence?</p> <p>21 A. I am unaware of any fraud. I don't think</p> <p>22 I'd find any either with respect to the CARD clinic.</p> <p>23 I don't think I'd find any either knowing what I do</p> <p>24 about that clinic and Dr. Black and the people</p> <p>25 involved.</p>

<p>Page 45</p> <p>1 Q. And, sir, you say that even though you</p> <p>2 have not seen any evidence yet in this case.</p> <p>3 A. That's correct.</p> <p>4 Q. All right. In terms of the opinions and</p> <p>5 the testimony that you plan to offer at trial, do</p> <p>6 you plan to offer any opinions or testimony about</p> <p>7 CARD's character or Dr. Black's character?</p> <p>8 A. Not at this point, but I'll reserve on</p> <p>9 that.</p> <p>10 Q. All right.</p> <p>11 A. Not -- not to this point. If it gets to</p> <p>12 be more serious, I might look at it.</p> <p>13 Q. Okay.</p> <p>14 A. Because I feel so strongly about helping</p> <p>15 the people in Libby and about this -- about the</p> <p>16 outcome of this case.</p> <p>17 Q. Senator Baucus, at one point, in terms of</p> <p>18 this congressional testimony, you made a statement</p> <p>19 about --</p> <p>20 A. Is it in 5? This is 5 right here.</p> <p>21 Q. Yep. I'll let you know in just a sec,</p> <p>22 sir.</p> <p>23 You made a statement about doctors across</p> <p>24 the country who didn't know about asbestos-related</p> <p>25 disease.</p>	<p>Page 47</p> <p>1 Montana. It took a long time to get their</p> <p>2 attention. We finally got some doctors to say this</p> <p>3 stuff in Libby is wicked stuff. That is why,</p> <p>4 frankly, EPA has started to understand how bad this</p> <p>5 really is."</p> <p>6 Did I read that correctly?</p> <p>7 A. You did.</p> <p>8 Q. Okay.</p> <p>9 MR. BECHTOLD: Almost. Almost.</p> <p>10 MR. DUERK: Did I miss something? Oh, "this really</p> <p>11 is." Is that what you're referring to?</p> <p>12 THE WITNESS: "How bad this really is."</p> <p>13 Q. (By Mr. Duerk) Yeah, sorry, I did say</p> <p>14 "that."</p> <p>15 Sir, in terms of this part of what you</p> <p>16 said in front of the Senate, I'd like to focus on</p> <p>17 the doctors that you spoke to nationally about</p> <p>18 asbestos-related disease as a result of Libby</p> <p>19 tremolite asbestos. Do you recall any of the</p> <p>20 pulmonologists or radiologists that you spoke with</p> <p>21 nationally?</p> <p>22 A. Well, I do recall this phenomenon.</p> <p>23 Q. Okay.</p> <p>24 A. And it is -- to my recollection, it's</p> <p>25 true that the disease of Libby tremolite is sort of</p>
<p>Page 46</p> <p>1 A. Where is that?</p> <p>2 Q. That would be --</p> <p>3 A. Do you want No. 5?</p> <p>4 Q. I'm trying to see if I have Exhibit 5 in</p> <p>5 front of me.</p> <p>6 A. I have 5 here. Do you want 5?</p> <p>7 Q. Do you see page 9 on the lower right-hand</p> <p>8 corner here?</p> <p>9 A. I do.</p> <p>10 Q. All right. Do you see the sentence that</p> <p>11 begins with "Let me refine that point"?</p> <p>12 A. Yeah, I do.</p> <p>13 Q. All right. And, sir, just for the</p> <p>14 record, I believe this is part of your statement in</p> <p>15 front of the Senate. I'd like to read this</p> <p>16 paragraph. Please follow along with me and tell me</p> <p>17 if I've read it accurately, okay?</p> <p>18 A. Okay.</p> <p>19 Q. "Let me refine that point. For a long</p> <p>20 time, we have been talking to lung specialists</p> <p>21 across the country about the Libby tremolite</p> <p>22 asbestos, and we got just so-so responses about how</p> <p>23 dangerous it was. Why? Because virtually none of</p> <p>24 those doctors had experience dealing with the</p> <p>25 pernicious kind of asbestos we have seen in Libby,</p>	<p>Page 48</p> <p>1 special and more wicked and more difficult and more</p> <p>2 pernicious than other forms of asbestos --</p> <p>3 asbestos-related diseases in other parts of the</p> <p>4 country.</p> <p>5 And I also recall that it took some time</p> <p>6 educating doctors on all this. But it's also</p> <p>7 important to know that I had great staff. My staff</p> <p>8 talked to those doctors.</p> <p>9 Q. Oh, okay.</p> <p>10 A. I haven't -- I did not personally.</p> <p>11 Q. All right.</p> <p>12 A. But, you know, when you run a Senate</p> <p>13 office, you can't do everything.</p> <p>14 Q. Understood.</p> <p>15 A. You've got to delegate some stuff. What</p> <p>16 you do, you hire the very best people you can get.</p> <p>17 And I had the best people. I'll tell you, you talk</p> <p>18 to people in Washington, D.C., they'll tell you I</p> <p>19 had the best staff there, and I think I did. We all</p> <p>20 worked hard. We cared. We wanted to work primarily</p> <p>21 with the state on the issues.</p> <p>22 But the head of my health care team is a</p> <p>23 lady named Liz Fowler. I'm sure she and her</p> <p>24 people -- I know how hard they worked -- talked to</p> <p>25 lots of people including doctors, including relevant</p>

<p>Page 49</p> <p>1 doctors. I did not personally. I'm quite confident</p> <p>2 they did.</p> <p>3 Q. Okay. But in terms of personal</p> <p>4 conversations that you had with any doctors about</p> <p>5 Libby amphibole and asbestos-related disease</p> <p>6 resulting from Libby, fair to say that the only</p> <p>7 doctor that you can recall conversations with, that</p> <p>8 you had personally, were conversations with</p> <p>9 Dr. Charles Brad Black, correct?</p> <p>10 A. No, there's Black and there's -- who's</p> <p>11 the guy in Spokane?</p> <p>12 Q. Dr. Whitehouse.</p> <p>13 A. Whitehouse.</p> <p>14 Q. Okay.</p> <p>15 A. He's another one. There's another doctor</p> <p>16 I talked to down in Texas. I called him up to</p> <p>17 recruit him to come to Montana. Holden or</p> <p>18 something, I've forgotten his name.</p> <p>19 Q. Okay.</p> <p>20 A. And he came up, and he actually spent</p> <p>21 some time in Libby, but some time in Missoula. So</p> <p>22 there -- those are three.</p> <p>23 Q. Let me see if you've spoken with any of</p> <p>24 the following doctors. Have you ever spoken with</p> <p>25 any of the local radiologists or local</p>	<p>Page 51</p> <p>1 Q. Did you ever speak with Dr. Steven Haber?</p> <p>2 A. Not to my recollection.</p> <p>3 Q. Do you recall --</p> <p>4 A. I could have, though.</p> <p>5 Q. That's okay.</p> <p>6 A. It's very possible.</p> <p>7 Q. That's okay.</p> <p>8 Do you recall ever speaking with a</p> <p>9 Dr. Heppe?</p> <p>10 A. Nope.</p> <p>11 Q. Do you recall speaking with any of the</p> <p>12 local radiologists based either in Libby or</p> <p>13 Kalispell, Montana about what they were and weren't</p> <p>14 seeing with patients alleged to have</p> <p>15 asbestos-related disease in Libby?</p> <p>16 A. I've already covered that.</p> <p>17 Q. Okay.</p> <p>18 A. But my staff -- don't forget -- my staff</p> <p>19 worked day and night talking to all the relevant</p> <p>20 people, and I know they talked to a lot of doctors.</p> <p>21 Q. And from conversations with your staff</p> <p>22 and the conversations that you had with Dr. Black,</p> <p>23 is that primarily the source of your understanding</p> <p>24 that's consistent with your words in front of the</p> <p>25 Senate, "We've been talking to lung specialists</p>
<p>Page 50</p> <p>1 pulmonologists in the Libby area who diagnosed and</p> <p>2 treated asbestos-related disease in Northwestern</p> <p>3 Montana?</p> <p>4 A. I talked -- I talked to somebody in</p> <p>5 Kalispell. I forgot who it was.</p> <p>6 Q. Do you recall ever speaking with</p> <p>7 Dr. Steven Becker?</p> <p>8 A. Is he in Kalispell?</p> <p>9 Q. He is not.</p> <p>10 A. Steven Becker, I don't -- not to the best</p> <p>11 of my recollection.</p> <p>12 Q. Do you recall ever speaking with</p> <p>13 Dr. dal Nogare?</p> <p>14 A. You're pulling all these names out, and,</p> <p>15 I mean, it's a long time ago.</p> <p>16 Q. All right. Sir --</p> <p>17 A. I might just -- I mean, if someone could</p> <p>18 remind me of that person's name, I might associate</p> <p>19 the name with the conversation --</p> <p>20 Q. Sure.</p> <p>21 A. -- but right now, I don't.</p> <p>22 Q. That's okay.</p> <p>23 Do you recall speaking with pulmonologist</p> <p>24 Tim Obermiller?</p> <p>25 A. Not to my recollection.</p>	<p>Page 52</p> <p>1 across the country about the Libby tremolite</p> <p>2 asbestos, and we got just so-so responses about how</p> <p>3 dangerous it was"?</p> <p>4 A. Yep, that's fair.</p> <p>5 Q. Okay. And --</p> <p>6 A. Again, I want to emphasize, I cannot</p> <p>7 personally talk to everybody.</p> <p>8 Q. Understood. And, sir, my point --</p> <p>9 A. That's why I hire good people.</p> <p>10 Q. Understood. During your deposition</p> <p>11 today, I'm trying to figure out the basis of your</p> <p>12 opinions.</p> <p>13 A. I'm telling you that they're good staff.</p> <p>14 Q. And I -- I hear you that you were relying</p> <p>15 on your staff, but without identifying the source of</p> <p>16 this information that Dr. Black and CARD were</p> <p>17 correct in their determinations about whether Libby</p> <p>18 amphibole disease existed, without knowing who the</p> <p>19 other doctors were, it's just difficult for me to</p> <p>20 form a complete picture. Is that -- do you</p> <p>21 understand?</p> <p>22 A. Maybe difficult for you, not for me.</p> <p>23 Q. All right. Sir, in terms of the doctors</p> <p>24 that you spoke with or your staff spoke with about</p> <p>25 Libby asbestos, do you recall speaking with any of</p>

<p>Page 53</p> <p>1 the doctors from Mount Sinai?</p> <p>2 A. I don't, but let me say this: Nobody</p> <p>3 that I or we talked to disputed the general</p> <p>4 statement that we just read.</p> <p>5 Q. All right.</p> <p>6 A. Nobody's disputed it.</p> <p>7 Q. Okay.</p> <p>8 A. It's accurate. There's no question that</p> <p>9 statement is accurate.</p> <p>10 Q. All right. In terms of Dr. Black's</p> <p>11 credentials, are you aware of whether Dr. Black is</p> <p>12 board-certified in any particular field of medicine?</p> <p>13 A. Well, he sure became the nation's expert</p> <p>14 on asbestos with all the time that he spent on it.</p> <p>15 Q. All right. Are you aware of his</p> <p>16 credential?</p> <p>17 A. Well, he's a pediatrician, wasn't he?</p> <p>18 But, my god, he spent a -- his whole life on this,</p> <p>19 the problem in Libby. Yeah, he's a -- he's good.</p> <p>20 He's a doctor.</p> <p>21 Q. In terms of Dr. Black's diagnosis rate,</p> <p>22 are you aware of any facts about Dr. Black's</p> <p>23 diagnosis rate compared to radiologists and</p> <p>24 pulmonologists looking at the same patient?</p> <p>25 A. I have no knowledge of any of that.</p>	<p>Page 55</p> <p>1 past?</p> <p>2 A. What's -- what -- again, what data?</p> <p>3 Q. Data related to the incidence of fraud in</p> <p>4 asbestos litigation.</p> <p>5 A. Oh, fraud, no, no.</p> <p>6 Q. Okay. Have you sat through any Senate</p> <p>7 hearings or any committee hearings or any committee</p> <p>8 discussions about the topic of fraud in asbestos</p> <p>9 litigation?</p> <p>10 A. No. Fraud in Medicare and other areas,</p> <p>11 but not in asbestos.</p> <p>12 Q. Have you sat through any meetings as part</p> <p>13 of your professional responsibilities related to</p> <p>14 fraud in asbestos litigation that's focused on the</p> <p>15 topic of a high-diagnostic differential?</p> <p>16 A. I don't know. Nope.</p> <p>17 Q. Have you sat through any meetings or read</p> <p>18 any materials in terms of your professional</p> <p>19 responsibilities related to the involvement of</p> <p>20 plaintiffs' lawyers hiring doctors to inflate</p> <p>21 diagnosis rates?</p> <p>22 A. Nope, never. It may happen. I'm unaware</p> <p>23 of it.</p> <p>24 Q. Have you sat through any testimony or</p> <p>25 read any materials in your professional duties</p>
<p>Page 54</p> <p>1 Q. All right. In terms of Dr. Black's</p> <p>2 methodology, are you aware of any facts related to</p> <p>3 the way in which Dr. Black diagnoses patients?</p> <p>4 A. I have full faith in him.</p> <p>5 Q. I understand that. My question is, do</p> <p>6 you know what he does to get at a diagnosis?</p> <p>7 A. I don't -- I don't sit in his lap, and I</p> <p>8 don't stand next to him. I don't go -- it's</p> <p>9 impossible for me to know that question. I just</p> <p>10 don't know.</p> <p>11 Q. All right. You don't know his</p> <p>12 methodology in terms of diagnosing patients; is that</p> <p>13 fair?</p> <p>14 A. That's fair. I just -- I just trust him</p> <p>15 because I have heard no evidence to the contrary.</p> <p>16 Q. I'm aware of that fact in particular.</p> <p>17 So --</p> <p>18 A. Which happened to be true. It's</p> <p>19 something that you should be aware of.</p> <p>20 Q. Senator Baucus, are you aware of the --</p> <p>21 the data related to fraud in asbestos litigation</p> <p>22 nationally?</p> <p>23 A. Nope.</p> <p>24 Q. Okay. Are you aware that that has been a</p> <p>25 topic of discussion in front of the Senate in the</p>	<p>Page 56</p> <p>1 related to a solitary doctor or a small group of</p> <p>2 doctors vastly overdiagnosing asbestos-related</p> <p>3 disease when outside objective reads show no</p> <p>4 evidence of disease?</p> <p>5 A. Nope.</p> <p>6 Q. During any part of your professional</p> <p>7 responsibilities or duties, have you heard testimony</p> <p>8 or read any reports about either millions or</p> <p>9 billions of taxpayer dollars wasted as a result of</p> <p>10 false claims for patients who are not sick?</p> <p>11 A. No, I'm not. It could be down in</p> <p>12 Florida, but not in Montana.</p> <p>13 MR. DUERK: Sir, if we could take a five-minute</p> <p>14 break, I'll gather some of my notes and try and speed this</p> <p>15 along.</p> <p>16 VIDEO OPERATOR: We are going off the record. The</p> <p>17 time is 11:18 a.m.</p> <p>18</p> <p>19 (Whereupon, a recess was taken)</p> <p>20</p> <p>21 VIDEO OPERATOR: We are back on the record. The time</p> <p>22 is 11:25 a.m.</p> <p>23 Q. (By Mr. Duerk) Senator, we just took a</p> <p>24 short break. I just want to cover a couple of just</p> <p>25 general topics.</p>

<p>Page 57</p> <p>1 A. Sure.</p> <p>2 Q. In -- in terms of Medicare eligibility, I</p> <p>3 want to go through a hypothetical with you and get</p> <p>4 your thoughts, okay?</p> <p>5 The hypothetical is this: Let's say an</p> <p>6 individual who lives in Libby, Montana, goes to a</p> <p>7 doctor and gets screened for asbestos-related</p> <p>8 disease and that patient has an abnormality because</p> <p>9 of a rib fracture that would appear on a chest</p> <p>10 x-ray.</p> <p>11 As part of the screening program, that</p> <p>12 patient's chest x-ray and CT scan is sent out to a</p> <p>13 panel of experts, and they identify that there's a</p> <p>14 rib fracture there.</p> <p>15 Those x-rays and CT's come back to the</p> <p>16 diagnosing physician who reviews the CT scan and the</p> <p>17 chest x-ray, and they sit down with the patient</p> <p>18 after conducting an exposure history and a physical</p> <p>19 exam, and they look at the CT scan and they say,</p> <p>20 "You have a fractured rib, but you do not have a</p> <p>21 diagnosis of asbestos-related disease."</p> <p>22 Does that all make sense so far in terms</p> <p>23 of the hypothetical? We've got a patient with no</p> <p>24 diagnosis of asbestos-related disease.</p> <p>25 In your mind, would it be proper for that</p>	<p>Page 59</p> <p>1 A. Without a diagnosis, that's correct.</p> <p>2 Q. Okay. Doctor, in terms of your</p> <p>3 background training and experience, and I think</p> <p>4 these questions are all going to be real basic, but</p> <p>5 you don't hold yourself out as a physician, correct?</p> <p>6 A. No, I don't.</p> <p>7 Q. Didn't go to medical school?</p> <p>8 A. I did not.</p> <p>9 Q. All right. Don't claim to know or</p> <p>10 understand the intricacies of what's required for a</p> <p>11 diagnosis of asbestos-related disease under the</p> <p>12 American Thoracic Society standard?</p> <p>13 A. That's correct. It's not my deal.</p> <p>14 Q. All right. So if CARD physicians have</p> <p>15 admitted under oath that B Readers, just</p> <p>16 radiologists who only look at a film, do not</p> <p>17 diagnose, you wouldn't have a reason to disagree</p> <p>18 with that?</p> <p>19 A. Again, if there's no diagnosis, that</p> <p>20 person should not get -- should not be covered.</p> <p>21 Q. Okay. And on the very narrow and</p> <p>22 specific question, I think I might anchor this to</p> <p>23 undisputed facts if we need to, but would you</p> <p>24 dispute that radiologists, those doctors who just</p> <p>25 look at films, are not responsible for diagnosing a</p>
<p>Page 58</p> <p>1 patient to be submitted for Medicare eligibility</p> <p>2 under the EHH provisions of the Affordable Care Act?</p> <p>3 A. I'd want a second opinion.</p> <p>4 Q. All right.</p> <p>5 A. I think, my gosh, I've gone to a lot of</p> <p>6 the doctors in my life, and sometimes it's better to</p> <p>7 go see another one.</p> <p>8 Q. All right. Well, within the context of</p> <p>9 this hypothetical, let's say that the doctor with</p> <p>10 the most information, the diagnosing physician, the</p> <p>11 doctor who has the CT scan and the chest x-ray, the</p> <p>12 doctor who's completed an inpatient assessment, the</p> <p>13 doctor who's reviewed the exposure history of the</p> <p>14 patient, the diagnosing physician in this instance</p> <p>15 says, "You're not sick. You don't have</p> <p>16 asbestos-related disease."</p> <p>17 Based on your understanding of the</p> <p>18 Affordable Care Act, would it be proper for that</p> <p>19 patient to be submitted for Medicare benefits?</p> <p>20 A. If the patient does not have disease, the</p> <p>21 answer is no.</p> <p>22 Q. Right. And so consistent with the</p> <p>23 original purpose of the EHH provisions in the</p> <p>24 Affordable Care Act, without a diagnosis, that</p> <p>25 patient shouldn't be deemed Medicare eligible?</p>	<p>Page 60</p> <p>1 patient?</p> <p>2 MR. BECHTOLD: Foundation.</p> <p>3 THE WITNESS: I was going to say I have no -- I</p> <p>4 cannot -- I cannot answer that question.</p> <p>5 Q. (By Mr. Duerk) Fair enough.</p> <p>6 A. I have no basis to answer that question.</p> <p>7 Q. Okay. And if we could look at Exhibit 2</p> <p>8 in front of you. I'm looking at page 13 of 41.</p> <p>9 A. Okay.</p> <p>10 Q. Sir, if I told you that CARD does not</p> <p>11 dispute the fact that B Readers do not diagnose,</p> <p>12 would you have any reason to disagree with that?</p> <p>13 A. I -- I'm --</p> <p>14 MR. BECHTOLD: Foundation.</p> <p>15 THE WITNESS: I'm not qualified to answer that</p> <p>16 question.</p> <p>17 Q. (By Mr. Duerk) All right. Back to the</p> <p>18 hypothetical of the patient with the rib fracture,</p> <p>19 if a doctor had submitted Medicare claims for over</p> <p>20 100 patients knowing that those patients did not</p> <p>21 have a diagnosis of asbestos-related disease, would</p> <p>22 you find that problematic?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because it would be fraud.</p>

<p>Page 61</p> <p>1 Q. In your mind, why would that scenario</p> <p>2 suggest fraud to you?</p> <p>3 A. It's inaccurate. Benefits based on false</p> <p>4 evidence.</p> <p>5 Q. Right. Continuing on with this</p> <p>6 hypothetical, if the doctor in that hypothetical</p> <p>7 where the patient had the a rib fracture signed a</p> <p>8 Medicare claim form stating that that patient had</p> <p>9 asbestosis and the date of diagnosis for that</p> <p>10 asbestosis in support of the claim for Medicare</p> <p>11 eligibility, would you find that fact problematic?</p> <p>12 A. Yeah. I don't quite understand the</p> <p>13 question. Did the doctor find that there is</p> <p>14 asbestos-related disease or not?</p> <p>15 Q. No. In this hypothetical, the doctor</p> <p>16 determined there was no diagnosis of</p> <p>17 asbestos-related --</p> <p>18 A. What did the doctor do?</p> <p>19 Q. The doctor in this hypothetical submitted</p> <p>20 a Medicare claim form that stated the patient had</p> <p>21 asbestosis. Would you find that problematic?</p> <p>22 A. Yes, I would.</p> <p>23 Q. Would you -- in your words, would you</p> <p>24 describe that as fraud?</p> <p>25 A. I'd have to look at the statute. It --</p>	<p>Page 63</p> <p>1 problematic if, in addition to all those negative</p> <p>2 outside readings, that patient went to a local</p> <p>3 pulmonologist who, similar to the hypothetical</p> <p>4 doctor, had been treating patients for Libby</p> <p>5 amphibole disease for years and said to the patient,</p> <p>6 "You are not sick. You do not have asbestos-related</p> <p>7 disease," and that patient returned to the</p> <p>8 hypothetical doctor, and the hypothetical doctor</p> <p>9 told the patient, "Ignore that pulmonologist's</p> <p>10 second opinion," would you find that problematic?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. A lot of doctors are quacks, and I</p> <p>14 just -- I just don't know what -- who that</p> <p>15 pulmonologist is. I have no idea who he is, so I --</p> <p>16 based on what you said, I -- I do not have that</p> <p>17 information.</p> <p>18 Q. But your statement is a lot of doctors</p> <p>19 are quacks.</p> <p>20 A. Some are. That's an overstatement. Some</p> <p>21 are.</p> <p>22 Q. All right. Senator Baucus, in your</p> <p>23 opinion are doctors from the Mayo Clinic in</p> <p>24 Rochester, Minnesota, doctors that fall into that</p> <p>25 quack category?</p>
<p>Page 62</p> <p>1 it certainly is wrong. I'd have to look at the</p> <p>2 statute legally. All I know is it's -- it raises --</p> <p>3 as I said problematic. It raises questions and</p> <p>4 seems wrong, and I'd have to dig into it a lot more</p> <p>5 to find out what's going on here.</p> <p>6 Q. Understood.</p> <p>7 Let's go into a separate hypothetical.</p> <p>8 Assume there's the same doctor who sees a patient</p> <p>9 and that patient had some experience in Libby,</p> <p>10 Montana, so that they were in Libby for the</p> <p>11 requisite period of time, and the doctor sent that</p> <p>12 patient's x-rays and CT scans out for a read from</p> <p>13 either a B Reader or a thoracic radiologist, a</p> <p>14 pulmonologist, someone with experience reading</p> <p>15 films, and all of those films, all of those chest</p> <p>16 x-rays came back as negative for asbestos-related</p> <p>17 disease, not just once but multiple times year after</p> <p>18 year, assuming there was no outside evidence</p> <p>19 according to radiologists and outside experts</p> <p>20 showing any signs consistent with asbestos-related</p> <p>21 disease, would you find it problematic if that</p> <p>22 doctor submitted that patient for Medicare benefits?</p> <p>23 A. Yeah. If there's no basis for finding</p> <p>24 disease, yeah.</p> <p>25 Q. Same hypothetical: Would you find it</p>	<p>Page 64</p> <p>1 A. No.</p> <p>2 Q. Generally no, fair?</p> <p>3 A. Fair.</p> <p>4 Q. Okay. Same hypothetical: Let's assume</p> <p>5 that patient, frustrated with the different opinions</p> <p>6 he's hearing about his disease --</p> <p>7 A. Right.</p> <p>8 Q. -- takes a trip to Rochester.</p> <p>9 A. Right.</p> <p>10 Q. And he remains there for several days,</p> <p>11 and he has his films over-read by radiologists, and</p> <p>12 he has an in-person physical examination, and he</p> <p>13 goes through a battery of tests.</p> <p>14 A. Right.</p> <p>15 Q. Let's assume that that patient is told by</p> <p>16 the doctors at Mayo, "You have no signs of</p> <p>17 asbestos-related disease. In fact, we over-read all</p> <p>18 of your scans going back for years, and none of them</p> <p>19 show any signs consistent with asbestos-related</p> <p>20 disease." Would it concern you if the hypothetical</p> <p>21 doctor still maintained and told that patient, "You</p> <p>22 have asbestos-related disease despite what all of</p> <p>23 these other doctors are saying"?</p> <p>24 A. I'd be concerned.</p> <p>25 Q. I would like to expand the hypothetical</p>

<p>Page 65</p> <p>1 just one step further. Let's think about this</p> <p>2 hypothetical doctor. And let's assume that this</p> <p>3 doctor has the same experience with this</p> <p>4 hypothetical patient who has gotten second opinions</p> <p>5 and has had his radiographic scans over-read year to</p> <p>6 year to year to year. Let's assume that this doctor</p> <p>7 is aware that the Mayo Clinic and other</p> <p>8 pulmonologists, expert B Readers who look at all of</p> <p>9 these films are consistently over-reading the</p> <p>10 hypothetical doctor's interpretations and telling</p> <p>11 this doctor, "These patients do not have any sign of</p> <p>12 disease. These patients are not sick." Assume this</p> <p>13 has been going on for a decade.</p> <p>14 Would it concern you if, after time, the</p> <p>15 hypothetical doctor who is submitting these people</p> <p>16 for Medicare decides not to even look at the scans</p> <p>17 that the expert outside thoracic radiologists are</p> <p>18 returning to him telling him these patients aren't</p> <p>19 sick. Would that concern you?</p> <p>20 A. That's awfully complicated. I'm having a</p> <p>21 hard time. There's so many hypotheticals there.</p> <p>22 It's just -- I like to deal with real facts, not</p> <p>23 with hypotheticals.</p> <p>24 Q. All right. There are a lot of variables,</p> <p>25 but assume that this hypothetical doctor for over a</p>	<p>Page 67</p> <p>1 A. No.</p> <p>2 Q. In terms of the diagnosis criteria that's</p> <p>3 used at the CARD clinic, do you have any knowledge</p> <p>4 of what criteria the CARD clinic uses in diagnosing</p> <p>5 patients?</p> <p>6 A. No. I generally trust doctors until they</p> <p>7 raise -- until questions are raised that cause</p> <p>8 concern. That's not happened in the case of</p> <p>9 Dr. Black.</p> <p>10 Q. All right. It hasn't happened to date,</p> <p>11 correct?</p> <p>12 A. What's today? The 19th?</p> <p>13 Q. Yes.</p> <p>14 A. Correct.</p> <p>15 Q. As of the 19th of July, you have still</p> <p>16 not read the complaint in this chase?</p> <p>17 A. No, I have not.</p> <p>18 MR. BECHTOLD: Asked and answered, third time.</p> <p>19 Q. (By Mr. Duerk) Doctor, the last time</p> <p>20 that you had any interaction with Dr. Black --</p> <p>21 A. Is it better to be a doctor or a Senator?</p> <p>22 Q. I apologize. Senator Baucus.</p> <p>23 A. I don't care.</p> <p>24 Q. I apologize. Senator Baucus, the last</p> <p>25 time that you had any communication with Dr. Black,</p>
<p>Page 66</p> <p>1 decade was told hundreds and hundreds and hundreds</p> <p>2 of times --</p> <p>3 A. By?</p> <p>4 Q. By thoracic radiologists, by outside</p> <p>5 physicians that his patients weren't sick and he</p> <p>6 wasn't listening, would that concern you?</p> <p>7 A. Yes.</p> <p>8 MR. BECHTOLD: So we're no longer dealing with just</p> <p>9 the guy who went to Rochester?</p> <p>10 MR. DUERK: We're dealing with hundreds of patients.</p> <p>11 MR. BECHTOLD: Okay.</p> <p>12 Q. (By Mr. Duerk) Doc -- I almost called</p> <p>13 you doctor. Senator --</p> <p>14 A. You did earlier already.</p> <p>15 Q. If I have -- there have been so many</p> <p>16 doctors in this case, I apologize.</p> <p>17 Senator, when it comes to any Medicare</p> <p>18 claim forms, any EHH forms -- I'm not trying to</p> <p>19 ambush you or issue you a trick question, but do you</p> <p>20 know what an EHH form is?</p> <p>21 A. No.</p> <p>22 Q. In terms of any witnesses or potential</p> <p>23 witness in this case outside of Dr. Black, have you</p> <p>24 spoken with any of the employees, managers, or</p> <p>25 directors at the CARD clinic?</p>	<p>Page 68</p> <p>1 was that in person or over the phone?</p> <p>2 A. Over the phone. Let me see, over the</p> <p>3 phone.</p> <p>4 Q. Over the phone.</p> <p>5 Can you recall, just ballpark the last</p> <p>6 time that you saw Dr. Black in person?</p> <p>7 A. I guess when -- the dedication of the</p> <p>8 clinic. There was a big ceremony up in Libby when</p> <p>9 an extension of the building was completed.</p> <p>10 Q. And it's often difficult for me to put</p> <p>11 events like that on a timeline, but was that three</p> <p>12 years ago, five years ago?</p> <p>13 A. More than that. I'd say six, seven --</p> <p>14 maybe -- three, five, I'd say eight. More than</p> <p>15 that. More than that.</p> <p>16 Q. So fair to say somewhere in the</p> <p>17 seven-to-10-year range?</p> <p>18 A. I'd say 10.</p> <p>19 Q. 10 years?</p> <p>20 A. Roughly.</p> <p>21 Q. Aside from that visit, have you been to</p> <p>22 the CARD clinic since?</p> <p>23 A. No.</p> <p>24 Q. When you saw Dr. Black, the last time</p> <p>25 that you saw him in person, how did he appear to</p>

<p>Page 69</p> <p>1 you?</p> <p>2 A. Great.</p> <p>3 Q. Great. What -- what do you recall?</p> <p>4 A. Dr. Black, upbeat, positive, smart,</p> <p>5 engaging.</p> <p>6 Q. Energetic?</p> <p>7 A. Energetic, yeah.</p> <p>8 Q. Did he appear to be in good physical</p> <p>9 health to you?</p> <p>10 A. Yes, he did.</p> <p>11 Q. Have you had any discussions with any of</p> <p>12 the expert witnesses in this case who have been</p> <p>13 disclosed by CARD?</p> <p>14 A. No.</p> <p>15 Q. Do you know who the other experts are?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. In terms of the testimony that you</p> <p>18 would offer at trial in this matter, would that</p> <p>19 testimony be limited to your personal experience</p> <p>20 with CARD and its members?</p> <p>21 A. I don't know. Depends what I'm asked.</p> <p>22 Q. All right. In terms of your expert</p> <p>23 witness disclosure, do you recall reviewing this</p> <p>24 before it went out?</p> <p>25 A. What's that?</p>	<p>Page 71</p> <p>1 Congressional Record itself?</p> <p>2 A. A lot does.</p> <p>3 Q. And just so I'm clear here, sometimes</p> <p>4 lawyers make arguments about what's included in</p> <p>5 legislative history. In terms of legislative</p> <p>6 history itself, would you agree that when you were</p> <p>7 in the Senate you were one member of a deliberative</p> <p>8 body that included many points of view?</p> <p>9 A. Correct.</p> <p>10 Q. In terms of the legislative history of a</p> <p>11 bill, would you agree that that legislative history</p> <p>12 is captured in the written record, in this instance</p> <p>13 the Congressional Record related to passage of the</p> <p>14 Affordable Care Act?</p> <p>15 A. That's relevant, but there probably are</p> <p>16 other revisions to it that can be in the category of</p> <p>17 legislative history. That's part of it.</p> <p>18 Q. And what other parts or what other</p> <p>19 information would you --</p> <p>20 A. It would be committee hearings.</p> <p>21 Q. Right.</p> <p>22 A. Committees.</p> <p>23 Q. So the committee hearings and the records</p> <p>24 of the committee hearings would also be relevant in</p> <p>25 your mind for --</p>
<p>Page 70</p> <p>1 Q. Exhibit 4, third page.</p> <p>2 A. No.</p> <p>3 Q. All right. Do you recall reviewing</p> <p>4 anything like that or discussing the contents of</p> <p>5 what would be included in your expert disclosure?</p> <p>6 A. No. I just -- I put that provision in</p> <p>7 the statute because I believed in it, and I'm more</p> <p>8 than happy to testify that -- as to the reasons why</p> <p>9 I put that in.</p> <p>10 Q. Okay. And in terms of any inquiry about</p> <p>11 CARD's diagnostic methodology or practices related</p> <p>12 to submitting claims for Medicare benefits, that is</p> <p>13 not any type of inquiry you have made?</p> <p>14 A. Inquiry where?</p> <p>15 Q. About CARD's diagnostic methodology or</p> <p>16 CARD's practices --</p> <p>17 A. No, no, no.</p> <p>18 Q. -- of submitting Medicare forms?</p> <p>19 A. No, no.</p> <p>20 Q. All right. Can we agree that on both of</p> <p>21 those topics you do not have any information?</p> <p>22 A. Correct.</p> <p>23 Q. Sir, in terms of testifying about the</p> <p>24 Affordable Care Act, would you agree with me that</p> <p>25 information about legislative history comes from the</p>	<p>Page 72</p> <p>1 A. Oh, there could be letters. There could</p> <p>2 be lots of stuff.</p> <p>3 Q. All right.</p> <p>4 A. Not just the record. The record is very</p> <p>5 important.</p> <p>6 Q. Right. Understood.</p> <p>7 I think what I'm trying to get to is,</p> <p>8 I've seen the -- what I'll represent to you is the</p> <p>9 legislative history in this case in terms of the</p> <p>10 hearings, the committee hearings, and the material</p> <p>11 submitted at those hearings.</p> <p>12 Is that the type of information that</p> <p>13 you're talking about that would be considered</p> <p>14 relevant for purposes of determining legislative</p> <p>15 history?</p> <p>16 A. Relevant, but not determinative.</p> <p>17 Q. Understood. And what would be</p> <p>18 determinative?</p> <p>19 A. Well, certainly more relevance as to what</p> <p>20 the senators from those states think. We're talking</p> <p>21 about Libby here. Senator, you know, of Louisiana</p> <p>22 doesn't care that much, but the Senators of the</p> <p>23 state of Montana do.</p> <p>24 Q. Understood.</p> <p>25 A. So...</p>

<p>Page 73</p> <p>1 Q. But in terms of what's passed into law, 2 the law is what's determinative of how this 3 legislation is enforced?</p> <p>4 A. Senators vote for all kinds of reasons. 5 It's hard to tell.</p> <p>6 Q. All right. When we enforce the criminal 7 code, for example, or when we enforce the Affordable 8 Care Act and determine how the Affordable Care Act 9 should govern all of us, the first place we look is 10 the law itself?</p> <p>11 A. Right.</p> <p>12 Q. Not necessarily legislative history?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And when we look to legislative 15 history, is it fair to say we look at the printed 16 record of your deliberations?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay. In terms of your declaration in 19 Exhibit 1, I think we've probably covered this at 20 length, but in terms of the opinions that you intend 21 to share at trial in this matter, is it your opinion 22 that in order to be Medicare eligible a patient must 23 have a diagnosis of asbestos-related disease?</p> <p>24 A. It helps.</p> <p>25 Q. It helps?</p>	<p>Page 75</p> <p>1 A. Generally that's correct.</p> <p>2 Q. Okay. And again, is there any exception 3 that you can think of here?</p> <p>4 A. No.</p> <p>5 Q. All right. So --</p> <p>6 A. But things are generally not black and 7 white. I mean, someone may say, "That person is not 8 qualified. That person" -- some other doctor may 9 say, "Yes, he is qualified."</p> <p>10 Q. Sure.</p> <p>11 A. So I mean, it's -- there are shades of 12 gray here.</p> <p>13 Q. Understood. But in terms of --</p> <p>14 A. The principle, we're talking about the 15 principle.</p> <p>16 Q. And in terms of the language of the law.</p> <p>17 A. The language of the law, that's correct.</p> <p>18 Q. If a patient doesn't have a diagnosis --</p> <p>19 A. Correct.</p> <p>20 Q. -- of asbestos-related disease from Libby 21 amphibole, they should not be Medicare eligible?</p> <p>22 A. Correct.</p> <p>23 MR. DUERK: Sir, I would like to take a few minutes 24 to review my notes once more to make sure I'm not missing 25 anything, and then I anticipate we may be through with my</p>
<p>Page 74</p> <p>1 A. It helps.</p> <p>2 Q. All right. Is a diagnosis required under 3 the Affordable Care Act?</p> <p>4 A. Under the law, yes.</p> <p>5 Q. Okay.</p> <p>6 A. But CMS may reject a claim. I mean, CMS 7 may reject, and there are all kinds of steps here.</p> <p>8 Q. All right. And then --</p> <p>9 A. But for the purposes of this discussion, 10 though, it's my intention that -- and I think it's 11 the intention of the statute -- that if you got a 12 diagnosis, you're covered; if there's no diagnosis, 13 you're not covered.</p> <p>14 Q. Right.</p> <p>15 A. It's very simple.</p> <p>16 Q. And in terms of the law itself, as we've 17 covered earlier, there's no provision stated in the 18 Affordable Care Act, the EHH provisions, that 19 creates an exception for a patient to be eligible 20 for Medicare benefits without a diagnosis.</p> <p>21 A. There must be a diagnosis.</p> <p>22 Q. And if a patient does not have a 23 diagnosis of asbestos-related disease, if a patient 24 is not sick from Libby amphibole, they should not be 25 submitted for Medicare benefits?</p>	<p>Page 76</p> <p>1 part. Thank you.</p> <p>2 VIDEO OPERATOR: We are going off the record. The 3 time is 11:52 a.m.</p> <p>4</p> <p>5 (Whereupon, a recess was taken)</p> <p>6</p> <p>7 VIDEO OPERATOR: We are back on the record. The time 8 is 12:04 p.m.</p> <p>9 Q. (By Mr. Duerk) Senator Baucus, during 10 your deposition today, it's appeared to me that 11 you've understood my questions. When you've needed 12 clarification, you've asked for that clarification. 13 Has that been your impression also?</p> <p>14 A. Yes.</p> <p>15 Q. Sir, I thank you for your time.</p> <p>16 Do you anticipate serving as a witness at 17 trial in this matter?</p> <p>18 A. Yes.</p> <p>19 MR. DUERK: Okay. I have nothing further. Thank 20 you, sir.</p> <p>21 MR. BECHTOLD: And I'll reserve --</p> <p>22 THE WITNESS: Sorry?</p> <p>23 MR. BECHTOLD: I'll reserve any questions for trial.</p> <p>24 THE WITNESS: Okay.</p> <p>25 VIDEO OPERATOR: That concludes the deposition. The</p>

<p>Page 77</p> <p>1 time is 12:04 p.m.</p> <p>2</p> <p>3 (Whereupon, the deposition concluded at</p> <p>4 12:04 p.m. for the day)</p> <p>5</p> <p>6 (Signature reserved)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 79</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF MONTANA)</p> <p>4 :ss</p> <p>5 COUNTY OF BEAVERHEAD)</p> <p>6 I, Robyn Ori English, Freelance Court Reporter and</p> <p>7 Notary Public for the State of Montana, residing in</p> <p>8 Dillon, do hereby certify:</p> <p>9 That I was duly authorized to and did swear in the</p> <p>10 witness and report the deposition of Senator Max Baucus,</p> <p>11 in the above-entitled cause; that the foregoing pages of</p> <p>12 this deposition constitute a true and accurate</p> <p>13 transcription of my stenotype notes of the testimony of</p> <p>14 said witness, all done to the best of my skill and</p> <p>15 ability; that the reading and signing of the deposition by</p> <p>16 the witness has been expressly reserved.</p> <p>17 I further certify that I am not an attorney nor</p> <p>18 counsel of any of the parties, nor a relative or employee</p> <p>19 of any attorney or counsel connected with the action, nor</p> <p>20 financially interested in the action.</p> <p>21 IN WITNESS WHEREOF, I have hereunto set my hand and</p> <p>22 affixed by notarial seal on this, the 26th day of July,</p> <p>23 2022.</p> <p>24</p> <p>25</p>
<p>Page 78</p> <p>1 DEPONENT'S CERTIFICATE</p> <p>2</p> <p>3 I, Senator Max Baucus, Deponent in the foregoing</p> <p>4 deposition, DO HEREBY CERTIFY, that I have read the</p> <p>5 foregoing pages of typewritten material and that the same</p> <p>6 is, with any changes thereon made in ink on the correction</p> <p>7 sheet and signed by me, a full, true and correct</p> <p>8 transcript of my oral deposition given at the time and</p> <p>9 place hereinbefore mentioned.</p> <p>10</p> <p>11</p> <p>12 Senator Max Baucus, Witness</p> <p>13</p> <p>14</p> <p>15</p> <p>16 SUBSCRIBED AND SWORN to before me this</p> <p>17 day of , 20____.</p> <p>18</p> <p>19</p> <p>20 NOTARY PUBLIC</p> <p>21 Residing at</p> <p>22 My Commission Expires</p> <p>23</p> <p>24 ROE - BNSF v. CARD</p> <p>25</p>	

Rough Draft

*BNSF Railway Company v
The Center For Asbestos Related Disease, Inc.*

*Senator Max Baucus
May 25, 2023*

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Min-U-Script® with Word Index

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<p style="text-align: right;">Page 5</p> <p>1 '78 -- '79 -- I mean, '78 to 2014. And I 2 represented the United States of America in China as 3 U.S. Ambassador to China in 2013 to '17. And then 4 -- since then, I've been self-employed. 5 Q. And, Max, during your time in Congress, 6 how many laws were you involved in drafting and 7 passing? 8 A. It seemed like an infinite number. Many. 9 No question, many. 10 Q. Is it fair to say that you're familiar 11 with the drafting and passage of laws in Congress? 12 A. With a good number of them, yes. Those 13 that are most important to me and to Montana, yes. 14 Q. Could you please tell the jury about your 15 involvement with the drafting of the language of the 16 Libby provision of the Affordable Care Act? 17 A. Yeah. Generally, I spent a lot of time 18 working on the Affordable Care Act. Actually, a 19 couple years, because at that time, the United 20 States really did not have much of a healthcare 21 system. It was very rewarding to help try to put 22 something together. 23 Two main purposes, one of which was 24 accomplished, was to give greater coverage to 25 Americans. A lot of Americans didn't have any</p>	<p style="text-align: right;">Page 7</p> <p>1 who is very, very adamant and active in making sure 2 that people of Libby got justice. 3 And I remember sitting in Gayla's living 4 room talking to a group there, and Les Skramstad -- 5 he explained the problems. And I said to Les, "Les, 6 I will do whatever it takes to bring justice to the 7 people of Libby, Montana." And he looked me 8 straight in the eye and pointed his finger at me and 9 said, "Well, Senator, many people have said they're 10 going to be helping and I'll be watching." 11 And I thought to myself immediately, he 12 didn't have to watch because I'm going to do 13 whatever it took to bring justice to the people of 14 Libby. 15 And so a major action was to include in 16 the Affordable Care Act a provision which would give 17 Medicare coverage to the people who were diagnosed 18 with the asbestos-related disease if Libby was 19 declared a national healthcare emergency. So I put 20 that provision in the bill to make sure that Libby 21 people that have asbestos get coverage so long as 22 the designation is made and actually a national 23 healthcare emergency designation. 24 And, frankly, I tried two or three times 25 to get different administrations to invoke that</p>
<p style="text-align: right;">Page 6</p> <p>1 health insurance, about 40 million at that time, as 2 I recall. 3 The other was to -- goal was to cut 4 costs, because the healthcare cost was so expensive. 5 But, at the same time, I was very 6 involved specifically with the problems that people 7 in Libby were having with asbestos-related diseases. 8 I spent a lot of time in Libby, visited Libby many, 9 many times on that issue; my staff maybe over ten 10 times on that issue. It's what you do to help Libby 11 receive justice because of all the asbestos-related 12 illnesses and diseases in Libby. 13 And so I thought I wanted to do something 14 to help Libby. Libby was not, in my judgment, 15 getting sufficient help in a lot of areas; one was 16 Superfund and asbestos on the playgrounds. It's 17 just -- in the town of Libby and annex. It was -- 18 the mine, it was just stunning to see these guys 19 come off the mine just caked with vermiculite. It 20 was just awful. 21 And at the same time, I met a lot of 22 people in Libby who were dying because of 23 asbestos-related diseases. One in particular, a 24 fella named Les Skramstad, and I spent some time 25 with Les. And Gayla Benefield is another lady there</p>	<p style="text-align: right;">Page 8</p> <p>1 declaration, and finally we were able in the Obama 2 administration to get that designation through then 3 Secretary Sebelius who was secretary of HHS. 4 And so I got familiar with that part of 5 the Affordable Care Act, and, frankly, many parts of 6 the Affordable Care Act because I spent two or three 7 years on that act to try to get it passed. 8 Q. Max, I'd like to draw your attention to 9 tab 3, Exhibit 112, and then to page 9 of that 10 exhibit. So if you look at the bottom right hand 11 corner, there's numbers. 12 A. Okay. Yeah. 13 Q. I guess it starts -- let's start at -- it 14 actually starts at page 6. 15 A. Okay, yeah. 16 Q. Could you tell the jury what you're 17 looking at? 18 A. Yeah, this looks like a portion of the 19 Congressional Record. I was speaking about this 20 provision about the people of Libby. If you want, I 21 can read parts, but that's what this is. 22 Q. Okay. And why did you make that 23 statement in the Congressional Record? 24 A. Because I wanted the law to pass and I 25 wanted members of Congress, in this case USA, to</p>

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<p style="text-align: right;">Page 9</p> <p>1 understand the reasons to putting this provision in 2 the bill. And it outlined -- this portion here 3 outlines the basic provisions of the bill that are 4 relevant to Libby. 5 Q. And, Max, I'd like you now to go to tab 7 6 in the exhibits, Exhibit 305. 7 A. All right. 8 Q. And I would like you to turn to the fifth 9 page of that exhibit. Could you tell the jury what 10 that exhibit is? 11 A. Well, this is basically an outline of the 12 Affordable Care Act. Well, there are various 13 outlines, provisions, sections of the bill, and the 14 whole bill is not here, but the bill is over 800 15 pages. 16 Q. Right. So what I'd like you to look at 17 is Section 1881A. 18 A. 1881A. 19 Q. And then if you go to Section 81A, sub e. 20 A. Yeah, I see that. 21 Q. Okay. And could you tell the jury what 22 -- who environmental exposure affected individuals 23 is defined as? 24 A. Well, the statute says, In general, a 25 person's covered who is diagnosed with one or more</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And when did you provide that 2 declaration? 3 A. Well, it's dated February 2002 -- 2022, a 4 while ago. Last year. 5 Q. And I understand that this declaration 6 was prepared by your staff working with other 7 people? 8 A. Yeah, right. Yeah, this is my 9 declaration. 10 Q. And why did you give this declaration? 11 A. First of all, because it's part of this 12 procedure, and second, I wanted to declare why I put 13 these provisions in the Affordable Care Act and what 14 they basically provide. 15 Q. Okay. 16 A. The purpose was to make sure the people 17 in Libby, Montana with asbestos-related disease are 18 covered under the Medicare so long as if the 19 declaration is approved by the secretary, and that 20 is the case here. 21 Q. So if you look at paragraph No. 4 of your 22 declaration, what does that read? 23 A. "I worked closely with Kathleen Sebelius, 24 then Secretary of the Department of Health and Human 25 Services, and her staff, to draft language in the</p>
<p style="text-align: right;">Page 10</p> <p>1 conditions described in subparagraph b. 2 Subparagraph b is conditions described in the 3 statute. For purposes of subparagraph A, the 4 following conditions are described in this 5 subparagraph. One, asbestosis, pleural thickening, 6 or pleural plaques as established by interpretation 7 of s B reader, qualified physician of a plain chest 8 x-ray or interpretation of the computed tomographic 9 radiograph, that's a CT, of the chest by a qualified 10 physician as determined by the secretary. And other 11 -- or such other diagnostic standards as the 12 secretary specifies. 13 Q. Okay. So to summarize, a person 14 qualifies if they have a diagnosis of one of those 15 conditions described in -- is diagnosed with one or 16 more conditions described in that subparagraph b 17 which you just read? 18 A. Yeah, that's what the statute says, and 19 that's what we -- the statute is written that way 20 because we wanted people in Libby to be covered. 21 Q. Now, Max, I would like you to now draw 22 your attention to the first tab, Exhibit 108. 23 A. Yeah, here it is. 24 Q. And what is this exhibit? 25 A. This is a declaration by me, Max Baucus.</p>	<p style="text-align: right;">Page 12</p> <p>1 Affordable Care Act to ensure that physicians at the 2 Center for Asbestos Related Disease, that is CARD, 3 in Libby, Montana, would be qualified under the 4 language of the Act to diagnose asbestosis, pleural 5 thickening and pleural plaques. 6 Q. And so did the language that you just 7 read under Section 1881A provide that language? 8 A. Yes, it does, yes. 9 Q. And then in paragraph 6, you state? 10 A. Do you want me to read that? 11 Q. Yes. 12 A. Okay. After passage of the Affordable 13 Care Act, Secretary Sebelius' department determined 14 that physicians at the Center for Asbestos Related 15 Disease are qualified under the language of the Act 16 to diagnose asbestosis -- I don't know that word -- 17 asbestosis, pleural thickening, or pleural plaques 18 by interpretation of a computed tomographic 19 radiograph of the chest. 20 Q. Is that still your testimony? 21 A. Yes. 22 Q. And paragraph 7. 23 A. 7 reads, Thus physicians at CARD are 24 qualified under the Act to diagnose asbestosis, 25 pleural thickening, pleural plaques by</p>

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<p style="text-align: right;">Page 13</p> <p>1 interpretation of a computed tomographic radiograph 2 of the chest. 3 Q. And that's still your testimony? 4 A. It is. 5 Q. And paragraph 8? 6 A. 8. Moreover, individuals diagnosed by 7 CARD physicians to have asbestosis, pleural 8 thickening, or pleural plaques are eligible for 9 Medicare benefits under the amendments to the Social 10 Security Act enacted by the Affordable Care Act. 11 Q. Is that still your testimony? 12 A. It is. 13 Q. And that was the intention of passing the 14 Act? 15 A. Absolutely. 16 Q. And paragraph 9? 17 A. This is longer. It was my express 18 intention and the express intention of Secretary 19 Sebelius to have the language of the Affordable Care 20 Act enable physicians at CARD be determined 21 qualified to diagnose asbestosis, plural thickening 22 and pleural plaques by interpretation of a computed 23 tomographic radiograph of the chest. It was also my 24 express intention and the express intention of 25 Secretary Sebelius that individuals diagnosed by</p>	<p style="text-align: right;">Page 15</p> <p>1 based on review of plain chest x-rays of individuals 2 and individuals so diagnosed by B Reader physicians 3 are eligible for Medicare benefits under the 4 amendments to the Social Security Act enacted by 5 Affordable Care Act. 6 Q. Is that still your testimony? 7 A. It is, yep. 8 Q. And so your testimony is that B Readers 9 can diagnose individuals and make them eligible for 10 Medicare benefits? 11 A. Yeah, B Readers finds a positive reading, 12 yeah, it qualifies. 13 Q. Okay. And how about paragraph 11? 14 A. It was my express intention and express 15 intention of Secretary to have the language of the 16 Affordable Care Act ensure that if B Reader 17 qualified physicians diagnosed asbestosis, pleural 18 thickening, and pleural plaques based on review of 19 plain chest x-rays of individuals, these individuals 20 would be eligible for Medicare benefits under the 21 amendments to the Social Security Act enacted by the 22 Affordable Care Act. 23 Q. And is that still your testimony? 24 A. Yep, yes. 25 Q. Now, Max, I would like to draw your</p>
<p style="text-align: right;">Page 14</p> <p>1 CARD physicians to have asbestosis, pleural 2 thickening, or pleural plaques would be eligible for 3 Medicare benefits under the amendments to the Social 4 Security Act enacted by the Affordable Care Act. 5 Q. And that's still your testimony? 6 A. It is. 7 Q. Doctor -- I mean, Senator, I would like 8 you to take a look at tab 6, Exhibit 301. 9 A. All right. Okay. 10 Q. And do you recognize what that is? 11 A. This an Overview Information Department 12 of HHS, and it's -- I guess it's -- it relates to 13 agency funding. 14 MR. DUERK: Object on foundation grounds. Go ahead. 15 Q. (By Mr. Bechtold) Have you seen this 16 document before, Max? 17 A. I don't think so. Nope, I haven't seen 18 this. 19 Q. All right. I will carry on. 20 A. Okay. 21 Q. Let's look -- go back to your 22 declaration, and now to paragraph 10. 23 A. 10. After passage of the Affordable Care 24 Act, B Reader qualified physicians may diagnosis 25 asbestosis, pleural thickening, and pleural plaques</p>	<p style="text-align: right;">Page 16</p> <p>1 attention to tab 10. 2 A. Okay. 3 Q. You're not a medical doctor, are you? 4 A. I am not. 5 Q. But B Readers are doctors, are they not? 6 A. That's correct, they are. 7 Q. But you're aware that B Readers do not 8 make clinical diagnoses, correct? 9 A. Yes. 10 Q. And B Readers just interpret x-rays, 11 correct? 12 A. That's correct. 13 Q. So why does the Affordable Care Act state 14 that a qualifying diagnosis is established by 15 interpretation by a B Reader qualified physician of 16 a plain chest x-ray or interpretation of a computed 17 tomographic radiograph of the chest as a qualified 18 physician as determined by the Secretary when B 19 Readers don't make clinical diagnoses? 20 MR. DUERK: Objection, foundation, no prior 21 disclosure for his opinion. Go ahead. 22 THE WITNESS: Well, the intent here is to make sure 23 that any person in Libby related to Libby's asbestos who 24 has asbestos-related disease is covered. That's the 25 purpose. And as I was talking to people in Libby when</p>

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<p style="text-align: right;">Page 17</p> <p>1 doing all this, it became apparent to me that it's 2 difficult to read a lot of these chest x-rays because the 3 disease is so varied and different individuals have 4 different variations of the disease. So while I'm sure 5 that everybody is covered, one doctor may miss a person 6 who should be covered, and another doctor will find it. 7 It's conclusive and responsible. So the point of all this 8 is to assure that even B Readers do not make, quote, 9 diagnoses, but if a B Reader finds a positive reading with 10 the CT scan or x-ray, that that's sufficient to allow the 11 patient to be qualified. 12 So the main point being here that there are 13 various ways for a positive determination to be made. One 14 is a diagnoses as CARD and another is a positive reading 15 by a B Reader, even though the B Reader does not 16 technically diagnosis. The B Reader finds a positive 17 result, then that's sufficient to qualify for Medicare 18 coverage. 19 MR. DUERK: The same objections, move to strike. Go 20 ahead. 21 Q. (By Mr. Bechtold) And so in your 22 declaration, when you testify that -- that in 23 paragraph 10 that B Reader qualified physicians may 24 diagnosis asbestosis, pleural thickening and pleural 25 plaques, that's with the recognition that these are</p>	<p style="text-align: right;">Page 19</p> <p>1 chance of early detection and treatment of 2 asbestos-related disease." 3 Boy that's true. That's my reading. 4 This piece bears repeating. 5 "Let me refine that point. For a long 6 time, we've been talking to lung specialists across 7 the country about the Libby tremolite asbestos, and 8 we got just so-so responses about how dangerous it 9 is. Why? Because virtually none of these doctors 10 experienced dealing with the pernicious kind of 11 asbestos we have in Libby. It took a long time to 12 get their attention. We finally got some doctors to 13 say this stuff in Libby is wicked stuff. That's 14 why, frankly, EPA has started to understand how bad 15 this really is." 16 "Essentially, the lack of access to 17 health care services in Libby-I will say it 18 again-has actually worsened the effects of this 19 contamination. It is worked to their disadvantage." 20 "The language before us today helps to 21 solve this. It allows us to fulfill the commitment 22 we made to the people of Libby when we passed the 23 Affordable Care Act 30 years ago. Heaven forbid, if 24 in the future another Superfund site like Libby 25 emerges, the bill before us today will allow the</p>
<p style="text-align: right;">Page 18</p> <p>1 not clinical diagnoses? 2 MR. DUERK: The same objections, foundation, no prior 3 disclosure, relevance, move to strike. Go ahead. 4 THE WITNESS: Yes. 5 Q. (By Mr. Bechtold) So why did Congress 6 include that in the Affordable Care Act? 7 A. Because I put it in. Pretty simple. I 8 put it in for good reason. People in Libby needed 9 justice, and the members of Congress agreed to put 10 it in. So that was passed. 11 Q. And I would like to draw your attention 12 to Exhibit 112 again, which is -- 13 A. Which tab? 14 Q. It is tab 3, sorry. And then go to page 15 9. And again, this is your testimony from the 16 Congressional Record? 17 A. Right, that's right. 18 Q. Could you take a look at the paragraph 19 that starts with, "Medical Care in Libby" about five 20 paragraphs from the bottom? 21 A. Page 9? 22 Q. Yeah. 23 A. Okay. "Medical care in Libby has 24 historically been limited due to Libby's isolated 25 location and economic situation, thus reducing the</p>	<p style="text-align: right;">Page 20</p> <p>1 Secretary to use the authorities in this provision 2 to fulfill our commitment to provide health care 3 services for those residents as well. 4 Q. So, Max, when you stated earlier that 5 doctors didn't seem to recognize -- 6 A. Correct. 7 Q. -- is this the sentiment you were -- 8 A. Yes, that is a sentiment. That's 9 basically the point, that's correct. 10 Q. So why did you include the provision 11 about allowing B Readers and other readers to have 12 interpretations qualify as diagnoses? 13 MR. DUERK: Objection, foundation, relevance, no 14 prior disclosure. 15 THE WITNESS: Because we wanted to make sure that 16 everybody who had the disease was covered. That meant the 17 statute to be read in an inclusive way. And the inclusion 18 would mean not only diagnosis determined by the CARD 19 Clinic, but also if a B Reader were to find a positive 20 indication of asbestos-related disease, that that would be 21 enough to allow that person to be covered under Medicare. 22 So I wanted to make sure that if a case was 23 missed at CARD, by the CARD Clinic, that it would be 24 picked up by someone else, by another doctor, we're 25 talking about doctors here, radiologists who would look at</p>

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<p style="text-align: right;">Page 21</p> <p>1 CT scans of the patient. And if that doctor finds a 2 positive indication of asbestos-related disease, that that 3 would be sufficient. I wanted to make sure that the 4 statute was sufficiently was inclusive and people would 5 not be missed because of a misdiagnosis. 6 Q. (By Mr. Bechtold) So for purposes of the 7 statute, does the word diagnosis include 8 interpretation by B Readers? 9 MR. DUERK: Objection, foundation, no prior 10 disclosure, relevance. 11 THE WITNESS: Yes, absolutely. That's the whole 12 point of this. 13 Q. (By Mr. Bechtold) And it sounds like 14 from your testimony before Congress, that you were 15 aware that other doctors didn't always agree with 16 CARD doctors? 17 A. No question, no question. Well, for a 18 lot of reasons. I mean, there's a different kinds 19 of asbestos that is more pernicious than asbestos 20 found in other parts of the country. The only time 21 that you get doctors is it's really bad. It's the 22 bad asbestos and it has to be picked up early. 23 Q. Max, I'm going to direct your attention 24 to tab 5, which is Exhibit 76, and I'd like you to 25 go to page 4 of that.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. What was? 2 Q. The purpose, again, of passing the 3 statute was to afford as much possible care as 4 possible. 5 A. Oh, you asked me about the purpose, yeah, 6 exactly. I mean, people in Libby -- 7 MR. DUERK: Objection, nonresponsive. 8 Q. (By Mr. Bechtold) Go ahead. 9 A. People -- I mean, it's a far corner part 10 of Montana. They just need help. I just wanted to 11 do all I could do to help. And I wanted the statute 12 to be broad and I wanted the coverage to be broad. 13 Q. Okay. Max, I'm going to draw your 14 attention now to tab 4, which is Exhibit 137. 15 A. Okay. 16 Q. And I would like to start at the last 17 page, page 3. And this is a document you've seen 18 before, correct? 19 A. Yes. 20 MR. DUERK: Objection, non-disclosure. Go ahead. 21 Q. (By Mr. Bechtold) Now, were you aware, 22 if we look that Docket No. 97, SDF 292 at the very 23 bottom, were you aware that CARD has been signing 24 these environmental health hazard forms for patients 25 without a clinical diagnosis since they've begun</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Okay. 2 Q. Do you recognize what this document is? 3 A. Yeah, I think that's a submission for 4 coverage. 5 MR. DUERK: Objection, no prior disclosure, 6 foundation. 7 Q. (By Mr. Bechtold) You didn't create this 8 form, did you? 9 A. No. 10 Q. Do you know who did? 11 A. I think HHS did, or maybe an agency of 12 HHS. 13 Q. That's not something that was created by 14 statute, was it? 15 A. That's correct. That's a -- this is 16 after the statute passed. HHS, pursuant to its 17 authority, designed -- or set up this procedure and 18 created this checklist. 19 Q. If there's some confusion between this 20 checklist and the statute, which should govern had? 21 MR. DUERK: Objection, foundation, no prior 22 disclosure. 23 THE WITNESS: The statute, clearly the statute. 24 Q. (By Mr. Bechtold) And that was the 25 purpose of passing the statute, correct?</p>	<p style="text-align: right;">Page 24</p> <p>1 going through the EHH guideline? 2 A. Well, this says it's an undisputed fact. 3 The answer is, I'm not personally aware, but it's 4 certainly possible. 5 Q. And you're aware that CARD has been 6 diagnosing individuals with asbestos-related 7 diseases even as qualified physicians under the Act, 8 correct? 9 A. Yes. 10 Q. And you're aware that B Readers have been 11 identifying people with asbestos-related disease 12 even though CARD doesn't find those same individuals 13 -- doesn't diagnose those same individuals with an 14 asbestos-related disease, correct? 15 MR. DUERK: Objection, form, leading, non-disclosure. 16 Go ahead. 17 THE WITNESS: Yes. 18 Q. (By Mr. Bechtold) And your testimony 19 from your declaration is that either CARD physicians 20 or B Readers with this diagnoses may qualify for 21 Medicare, correct? 22 A. Yes. 23 Q. So have you been aware that CARD has been 24 submitting these individuals for environmental 25 health hazard checklist benefits through Medicare</p>

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<p style="text-align: right;">Page 25</p> <p>1 when B readers alone find an asbestos-related 2 disease? 3 MR. DUERK: Objection. 4 THE WITNESS: No. I just don't know. 5 Q. (By Mr. Bechtold) Max, I'm going to draw 6 your attention now to your -- to tab 8, Exhibit 348. 7 MR. DUERK: Has this been admitted into evidence? 8 MR. BECHTOLD: Nothing has been admitted yet. 9 Q. (By Mr. Bechtold) I'm going to draw your 10 attention to Exhibit 348. Do you know what this is? 11 A. This is my deposition earlier. 12 Q. Do you recall giving a deposition in July 13 of 2022? 14 A. I do. 15 Q. Do you recall being asked some questions 16 about your declaration in July of 2022? 17 A. I do. 18 Q. I'll draw your attention to page 9 and 10 19 of the deposition. So on page 9. 20 A. Page 9. I see it. 21 Q. So let's start on line 21. Just review 22 that to yourself, please. 23 A. Okay. Okay. 24 Q. Does that refresh your memory a little 25 bit about the declaration?</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. And based upon your understanding of your 2 drafting of the Affordable Care Act, how does one 3 individual get diagnosed with an asbestos-related 4 disease? 5 A. Either by the CARD Clinic and getting 6 diagnosed as having the disease, or when a B Reader 7 finds a positive indication. Either case, that 8 qualifies. 9 MR. BECHTOLD: Well, Max, thank you for your time. I 10 have no more questions right now. Mr. Duerk may have some 11 cross-examination questions, at which time I can follow-up 12 afterward. 13 THE WITNESS: Sure. All right. 14 MR. DUERK: Let's go ahead and take a short break. 15 VIDEO OPERATOR: We're going off the record. The 16 time is 10:46 a.m. 17 18 (Whereupon a recess was taken) 19 20 VIDEO OPERATOR: We are back on the record. The time 21 is 10:56 a.m. 22 23 24 25</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yeah. 2 Q. So is it still your testimony that this 3 declaration was drafted with the help of your staff? 4 A. It is. 5 Q. And you signed it because you believed it 6 to be true? 7 A. Yes. That's true. 8 Q. Okay. I would like to now move on to 9 page 20. 10 A. All right. All right, 20. 11 Q. And I'll draw your attention to line 13. 12 Just read through that to yourself and refresh your 13 memory. 14 A. All right. 15 Q. And then on to page 21. 16 A. Yeah. Yeah. 17 Q. So is your testimony still that the idea 18 behind the Affordable Care Act was to provide 19 Medicare incentives for people who were exposed to 20 Libby asbestos, correct? 21 A. Yes. 22 Q. And to provide Medicare coverage for 23 those who were diagnosed with asbestos-related 24 diseases, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 CROSS-EXAMINATION 2 3 BY MR. DUERK: 4 Q. Senator Baucus, I'm Adam Duerk. We've 5 taken your deposition once before today; is that 6 correct? 7 A. That's correct. 8 Q. That was July of 2022, last year? 9 A. Sounds about right. 10 Q. Sir, to begin with, I would just like to 11 review with you what you did in anticipation of your 12 deposition today. Who, if anyone, did you speak to 13 about your deposition prior to today? 14 A. I spoke to Mr. Bechtold. 15 Q. Okay. And when did that conversation 16 occur? 17 A. Yesterday. 18 Q. How long was that conversation? 19 A. Fifteen minutes, twenty minutes. 20 Q. Did you speak with anyone else before 21 today's deposition? 22 A. No. 23 Q. Okay. So one conversation with Tim 24 Bechtold? 25 A. Uh-huh.</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. We've reviewed some material together</p> <p>2 during your deposition?</p> <p>3 A. Yeah.</p> <p>4 Q. In that fifteen-minute conversation, did</p> <p>5 you review those materials with Mr. Bechtold?</p> <p>6 A. Yes.</p> <p>7 Q. Between the time of your deposition last</p> <p>8 July and this morning, have you spoken with anyone</p> <p>9 else about your deposition?</p> <p>10 A. No.</p> <p>11 Q. And, sir, the reason that I ask is, at</p> <p>12 your last deposition, we spoke about the declaration</p> <p>13 that you signed; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. That deposition lasted several hours, do</p> <p>16 you recall that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay.</p> <p>19 A. It was a long time.</p> <p>20 Q. It was a long time. And during that</p> <p>21 deposition, I asked you about any of the materials</p> <p>22 that you reviewed in anticipation of that July 20,</p> <p>23 2022 deposition, and do you recall at the last</p> <p>24 deposition, you told me that you didn't recall</p> <p>25 speaking with anyone prior to that deposition about</p>	<p style="text-align: right;">Page 31</p> <p>1 sound accurate?</p> <p>2 A. Yeah, except I think at some point I saw</p> <p>3 the declaration and knew what was in the declaration</p> <p>4 because I signed it.</p> <p>5 Q. Sure. But aside from that declaration,</p> <p>6 last time we were together, you had seen no written</p> <p>7 pleadings, no copies of the complaint, no</p> <p>8 depositions, no EHH forms, no written documents of</p> <p>9 any kind, correct?</p> <p>10 A. Correct.</p> <p>11 Q. At the last deposition, you essentially</p> <p>12 testified that your testimony was based on your</p> <p>13 memory alone; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. In terms of any file in this case, you</p> <p>16 don't have a file related to this current lawsuit</p> <p>17 related to the opinions that you have been offered?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. You haven't talked to any</p> <p>20 witnesses in this case, right?</p> <p>21 A. Correct.</p> <p>22 Q. Last time before you were deposed, you</p> <p>23 were not aware that you had been declared an expert</p> <p>24 witness in this case, correct?</p> <p>25 A. All I know is Dr. Black asked me if I</p>
<p style="text-align: right;">Page 30</p> <p>1 the basis of your testimony?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I also asked in July of 2022,</p> <p>4 whether you recalled reviewing any written records,</p> <p>5 and during the last deposition, you indicated that</p> <p>6 you had not reviewed anything in writing, do you</p> <p>7 recall that?</p> <p>8 A. Yeah, I do. Yes, that's right.</p> <p>9 Q. During that last deposition, likewise,</p> <p>10 you testified that you had had a 15-minute</p> <p>11 conversation with Dr. Black before the deposition,</p> <p>12 but other than that 15-minute conversation, you</p> <p>13 didn't recall any other conversations?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. You didn't remember any written</p> <p>16 information being sent to you other than a draft of</p> <p>17 the declaration before your last deposition,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. So CARD sent you no written materials</p> <p>21 prior to that last deposition, right?</p> <p>22 A. Correct.</p> <p>23 Q. And so I didn't have an opportunity to</p> <p>24 ask you any questions about any written materials</p> <p>25 because you said you hadn't seen any, does that</p>	<p style="text-align: right;">Page 32</p> <p>1 wanted to testify, and I said yes.</p> <p>2 Q. But during the last deposition when I</p> <p>3 asked you, it appeared you weren't aware that you'd</p> <p>4 been declared an expert in this case.</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Sir, when we visited together in</p> <p>7 July, you agreed with me that expert witnesses must</p> <p>8 be armed with facts, does that sound right?</p> <p>9 A. Anybody speaks should be armed with</p> <p>10 facts.</p> <p>11 Q. Right. And if someone is offered as an</p> <p>12 expert witness in a federal trial, it would be</p> <p>13 especially important for them?</p> <p>14 A. Well, I don't know that's a legal</p> <p>15 determination. I'm not qualified to answer that.</p> <p>16 Q. Okay. Sir, if you would look at tab 20,</p> <p>17 please, I'm looking at page 36.</p> <p>18 A. This is the deposition?</p> <p>19 Q. Yes. And, sir, this is your deposition</p> <p>20 from July 19th, 2022. I was there, you were there,</p> <p>21 Mr. Bechtold was there and the Court Reporter was</p> <p>22 there, correct?</p> <p>23 A. Just a second. This is falling apart.</p> <p>24 Okay, say again.</p> <p>25 Q. Sure. I was there, you were there?</p>

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<p style="text-align: right;">Page 33</p> <p>1 A. What page are you on?</p> <p>2 Q. We're at page 36, line 10. We were</p> <p>3 talking about the requirement for understanding</p> <p>4 facts of the case. So I'll read this part of your</p> <p>5 deposition and please tell me if I'm right.</p> <p>6 A. Page 36?</p> <p>7 Q. Page 36, and I'm starting at line 10 and</p> <p>8 I'll continue to line 24.</p> <p>9 A. I'm trying to find a page number.</p> <p>10 Q. Top left-hand corner of each of the</p> <p>11 individual pages are marked.</p> <p>12 A. Mine only goes to 35.</p> <p>13 Q. If you can hand it to me, I can help you.</p> <p>14 You were on tab 19. Here's tab 20.</p> <p>15 A. Okay. Thanks for helping me find this.</p> <p>16 Q. Do you see a copy of a transcript of your</p> <p>17 deposition taken July 19th, 2022?</p> <p>18 A. Yes.</p> <p>19 Q. If you would go to page 36.</p> <p>20 A. Page 36, okay.</p> <p>21 Q. I'll read lines 10 through 24. Please</p> <p>22 tell me if I've read them correctly.</p> <p>23 "Q. Okay. Sir, in order to have</p> <p>24 meaningful testimony --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. (By Mr. Duerk) Sir, in terms of the</p> <p>2 information in writing that I had from you about the</p> <p>3 opinions you intended to express last time, the only</p> <p>4 information that I had from you was your declaration</p> <p>5 to the best of your knowledge, fair?</p> <p>6 A. I guess. You tell me if that's all you</p> <p>7 had. I don't know what you had.</p> <p>8 Q. Yeah, right. I'll represent to you that</p> <p>9 that's all I had.</p> <p>10 A. Okay. If that's case, that's the case.</p> <p>11 It must be a fact.</p> <p>12 Q. I was not aware of any documents that you</p> <p>13 had been testifying about.</p> <p>14 In terms of the testimony that you</p> <p>15 provided related to your expert opinions last time,</p> <p>16 I asked you about the Congressional Record and</p> <p>17 legislative history. Do you recall --</p> <p>18 A. I do.</p> <p>19 Q. Okay. And last time we were together at</p> <p>20 the deposition, you had not reviewed the</p> <p>21 Congressional Record or the legislative history of</p> <p>22 this section of the Affordable Care Act, correct?</p> <p>23 A. I have not read the record, that's</p> <p>24 correct, because I was part of it at all. I spoke</p> <p>25 on the floor of the Senate. Part of the record was</p>
<p style="text-align: right;">Page 34</p> <p>1 Q -- a witness must be armed with facts,</p> <p>2 fair?</p> <p>3 A. Generally.</p> <p>4 Q. Okay. Is there a situation that you</p> <p>5 can imagine where it wouldn't be important for a</p> <p>6 witness to know the facts of a case?</p> <p>7 A. No.</p> <p>8 Q. Okay. So would you agree that in</p> <p>9 order to offer any opinions about any matter, it's</p> <p>10 important for a witness to be equipped with the</p> <p>11 facts, fair?</p> <p>12 A. Yeah."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yep.</p> <p>15 Q. Okay. So in terms of the facts of the</p> <p>16 case that were before us last time, you had not</p> <p>17 reviewed any of the pleadings in this case, any of</p> <p>18 the deposition testimony, you had not reviewed the</p> <p>19 statement of undisputed facts or any of the other</p> <p>20 documents that Mr. Bechtold put in front of you</p> <p>21 today, is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. And, sir, in terms of the disclosure in</p> <p>24 this case --</p> <p>25 (Pause)</p>	<p style="text-align: right;">Page 36</p> <p>1 a recording of what I said.</p> <p>2 Q. Sir, in terms of any communication that</p> <p>3 you've had with the Social Security administration</p> <p>4 about the EHH provisions of the Affordable Care Act,</p> <p>5 we reviewed some communication between you and the</p> <p>6 Social Security Administration at your deposition</p> <p>7 today or prior, fair?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And in terms of any communication</p> <p>10 that you've had with the Social Security</p> <p>11 Administration, have you had any communication with</p> <p>12 the Social Security Administration in the last 10</p> <p>13 years?</p> <p>14 A. No -- well, 10 years. No.</p> <p>15 Q. Okay. In terms of any communication with</p> <p>16 the CARD Clinic or any individual who has ever</p> <p>17 worked at the CARD Clinic, have you had any</p> <p>18 communication with anybody at the CARD Clinic in the</p> <p>19 last 10 years?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Who?</p> <p>22 A. Dr. Black.</p> <p>23 Q. Okay. Aside from Dr. Black, have you</p> <p>24 communicated with anybody else at the CARD Clinic?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 37</p> <p>1 Q. And when was the last time you recall 2 talking to Dr. Black? 3 A. Oh, months ago, a year ago. He asked me 4 if I would be a witness in this case, and I said 5 yes. 6 Q. Okay. Outside of Dr. Black asking you 7 that question, do you recall any specifics of the 8 communication? 9 A. No. I said that I would I would love to. 10 Q. Prior to that conversation with 11 Dr. Black, when was the last time you recall having 12 any conversations with him? 13 A. Oh, I went up to the Clinic dedication up 14 there. 15 Q. And, sir, that was in about 2009 or 2010? 16 A. It could be. It was several years ago. 17 Q. I believe when we visited at your last 18 deposition, you said it was approximately 10 years 19 ago, maybe more, does that sound about right? 20 A. It could be more. 21 Q. Okay. So that would put us at 2013, 22 perhaps earlier? 23 A. Probably earlier. 24 Q. Earlier than -- 25 A. Because I went to Beijing in 2013.</p>	<p style="text-align: right;">Page 39</p> <p>1 responsibility at that point, fair? 2 A. Certainly. 3 Q. Sir, I'd like to talk specifically about 4 whether or not anyone at CARD has alerted you to 5 conversations that CARD has had with the Social 6 Security Administration about these provisions in 7 the Affordable Care Act related to a diagnosis of 8 asbestos-related disease? 9 A. No. 10 Q. No? Okay. Are you aware of the sworn 11 testimony from SSA employee Heather Hilman in this 12 case? 13 A. No. 14 Q. Have you seen or been alerted to any 15 e-mails from the Social Security office sent to CARD 16 that indicate to CARD that they are not to submit 17 patients who have not been diagnosed with an 18 asbestos-related disease for Medicare benefits? 19 A. No. 20 Q. And so, in your mind, both during your 21 deposition testimony today and last July, it appears 22 that you would be concerned if there were patients 23 who were submitted for Medicare benefits who did not 24 have a diagnosis of asbestos-related disease, fair? 25 A. No, that's not fair. Because it could be</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. 2 A. So it had to have been earlier. 3 Q. In terms of that dedication ceremony, 4 what conversations, if any, do you remember having 5 with Dr. Black or any other CARD staff members? 6 A. Just how this went along. 7 Q. In terms of any communication with 8 anybody from the SSA during that time frame, do you 9 remember speaking with anybody at the Social 10 Security Administration? 11 A. Nope. 12 Q. Okay. In terms of your involvement in 13 passing legislation, the law is set forth in the 14 published statute itself, correct? 15 A. Correct. 16 Q. Okay. And in terms of how that law is 17 interpreted or enforced, once legislation is passed 18 into law, it's no longer necessarily within your 19 purview to enforce that law, correct? 20 A. Well, no. I mean, if I have something to 21 do with passing the law, I make sure that the law is 22 upheld. So I do have that interest. 23 Q. Right. But in terms of ensuring that the 24 law is adhered to, abided by, read, recognized and 25 understood, that's not your task or your</p>	<p style="text-align: right;">Page 40</p> <p>1 a B Reader to find a positive determination. And 2 then that would indicate that that person has an 3 asbestos-related disease. 4 Q. I understand what you're saying today. 5 I've not heard this testimony from you before. So 6 I'll go about it this way. 7 MR. BECHTOLD: Misstates his testimony. 8 Q. (By Mr. Duerk) I'll go about it this 9 way. In order to be Medicare eligible, it is 10 important for a person to be sick with 11 asbestos-related disease, correct? 12 A. Yep. 13 Q. Okay. And your intent was to make sure 14 that individuals in Libby would receive Medicare 15 benefits if they were sick due to asbestos exposure, 16 correct? 17 A. Correct. 18 Q. Okay. It was your intent and the intent 19 of other United States Senators to make sure that in 20 order for a patient to be Medicare eligible, they 21 had to have been exposed to Libby asbestos and be 22 suffering from that exposure to Libby asbestos? 23 A. Right. 24 Q. It was not your intent to allow patients 25 to be submitted for lifetime Medicare benefits if</p>

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<p style="text-align: right;">Page 41</p> <p>1 they were not sick due to an exposure to Libby 2 amphibole, correct? 3 A. Correct. 4 Q. And so if you had a patient who CARD knew 5 not to be sick due to an exposure to Libby asbestos, 6 it was not your intent that that patient submitted 7 for lifetime Medicare benefits? 8 A. That's a difficult question to answer 9 because that's a loaded question. 10 Q. In the past -- 11 A. Because basically -- I'll tell you why 12 it's loaded. Because you're making -- you're 13 assuming that the diagnosis was made knowing there's 14 no -- with intent to deceive, and I'm saying a 15 diagnosis could be missed. 16 Q. I understand that diagnoses can be 17 missed, but if a clinician submits a patient for 18 lifetime Medicare benefits, you would expect that 19 that patient would be sick due to their exposure to 20 Libby amphibole, correct? 21 A. Yeah. 22 Q. Is that a yes? 23 A. Yes. 24 Q. And, sir, that's the very intent of the 25 Affordable Care Act Libby provisions related to</p>	<p style="text-align: right;">Page 43</p> <p>1 (Off the record discussion) 2 3 VIDEO OPERATOR: We are back on the record. The time 4 is 11:18 a.m. 5 Q. (By Mr. Duerk) Sir, did the three video 6 clips played during the July 19th, 2022 deposition 7 reflect your testimony under oath at that time? 8 A. At that time. 9 Q. Okay. Sir, your intention and the 10 intention of the environmental health hazard 11 statutory provisions in the Affordable Care Act is 12 that if you've got a diagnosis, you're covered. If 13 there's no diagnosis, you're not covered. It's very 14 simple. Correct? 15 A. That's what I said back then. 16 Q. Okay. And you also testified that the 17 purpose of the environmental health hazard 18 provisions in the Affordable Care Act was to provide 19 Medicare benefits for people who were exposed to 20 Libby asbestos, not to provide Medicare benefits for 21 people who are not sick? 22 A. Right. 23 Q. Okay. And so, sir, at your -- at your 24 deposition, you had a couple of different 25 hypotheticals posed to you.</p>
<p style="text-align: right;">Page 42</p> <p>1 environmental health hazards in your mind, correct? 2 A. Well, in my mind, is it -- I don't know 3 words you used, I don't know what exact words you 4 used, but my point is, and I've said this many 5 times, if a person's got the disease and the disease 6 has been diagnosed, diagnosed either by CARD or by a 7 B Reader, that's sufficient for coverage. 8 Q. Sir, in order to be eligible for Medicare 9 benefits under the Affordable Care Act, an 10 individual must have a diagnosis of an 11 asbestos-related disease, correct? 12 A. Depending what you mean by diagnosis. 13 Q. All right. That wasn't my question at 14 last summer's deposition. So what I'd like to do is 15 show you that -- your response to that answer, and I 16 would like to determine if it's still correct, okay? 17 A. Sure. 18 Q. All right. 19 20 (Whereupon, Clip No. 1 was played 21 for the jury) 22 23 VIDEO OPERATOR: We are going off the record. The 24 time is 11:17 a.m. 25</p>	<p style="text-align: right;">Page 44</p> <p>1 A. They were sure long and complicated. 2 They were very long and complicated. I don't know 3 how relevant they were, because they were just 4 hypotheticals. 5 Q. I understand what you're saying here, but 6 I'll see if I can make those -- 7 A. Okay. 8 Q. -- hypotheticals a little bit easier. So 9 say we've got a patient with no diagnosis. We've 10 got a patient with no diagnosis of asbestos-related 11 disease, and we've got a patient with a B Read that 12 the B Reader says doesn't have a diagnosis of 13 asbestos-related disease, okay? 14 A. So what's the question? 15 Q. The question is, should that person get 16 Medicare benefits? 17 A. Again, who is this person and describe 18 that person again? 19 Q. Sure. The CARD patient is the subject 20 here. Imagine a CARD patient with no diagnosis of 21 asbestos-related disease from anybody, from a B 22 Reader, from a pulmonologist, from the provider, 23 from CARD, imagine a patient who has no diagnosis of 24 asbestos-related disease, that patient should not 25 get Medicare?</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. Correct.</p> <p>2 Q. Okay. During your deposition last time,</p> <p>3 I asked you about B Readers and the diagnostic</p> <p>4 standards for physicians at CARD. And last time we</p> <p>5 were together, you said you were not qualified to</p> <p>6 answer any of these questions. Do you recall that?</p> <p>7 A. No, I do not.</p> <p>8 Q. Okay. If you could turn to page 59 of</p> <p>9 your deposition. I'm looking at line 2.</p> <p>10 A. Okay.</p> <p>11 Q. You don't hold yourself out nor have you</p> <p>12 ever held yourself out as a physician, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You didn't go to medical school?</p> <p>15 A. Correct.</p> <p>16 Q. You don't claim to know or understand the</p> <p>17 intricacies of what's required for a diagnosis of</p> <p>18 asbestos-related disease under the American Thoracic</p> <p>19 Society standards, correct?</p> <p>20 A. Right.</p> <p>21 Q. Now, I'll put the question to you this</p> <p>22 way. So if CARD physicians have admitted under oath</p> <p>23 that B Readers, just radiologists, who only look at</p> <p>24 a film did not diagnose, you would have no reason to</p> <p>25 disagree with me, correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Correct.</p> <p>2 Q. You say correct today, but during your</p> <p>3 testimony in July, you said, you couldn't answer</p> <p>4 that question. You had no basis to answer that</p> <p>5 question, correct?</p> <p>6 A. Yes, but also I want to do something else</p> <p>7 here. Earlier you said that a witness, an expert</p> <p>8 witness, should have the facts. So I went back and</p> <p>9 I reviewed so that I would have the facts. I</p> <p>10 reviewed the statute to get the facts. So now I</p> <p>11 have more facts and now I can answer that more</p> <p>12 accurately.</p> <p>13 Q. And, sir, I appreciate that, but when I</p> <p>14 deposed you in July of 2022, my intent was to get</p> <p>15 all of the information from you that we could</p> <p>16 anticipate here at trial so that I had a clear idea</p> <p>17 of what your testimony was.</p> <p>18 A. And I have a better idea because I have</p> <p>19 more facts.</p> <p>20 Q. I have a better idea of what you're</p> <p>21 saying here today.</p> <p>22 A. Correct.</p> <p>23 Q. But it's also fair to say that you didn't</p> <p>24 say anything about what B Readers did or what a</p> <p>25 radiologist's role was in the diagnostic process at</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Based on what you just told me. Based on</p> <p>2 only what you just said, yes. There may be more to</p> <p>3 it, but based upon what you just said.</p> <p>4 Q. Okay. And then I'll read what I asked</p> <p>5 you precisely and what your answer is on page 59.</p> <p>6 A. Okay.</p> <p>7 Q. I'm looking at page 59, line 14.</p> <p>8 Q. So if CARD physicians have admitted</p> <p>9 under oaths that B Readers, just radiologists, who</p> <p>10 only look at a film do not diagnose, you wouldn't</p> <p>11 have a reason to disagree with that.</p> <p>12 A. Again, if there's no diagnosis, that</p> <p>13 person should not get -- should not be covered."</p> <p>14 Did I read that correctly?</p> <p>15 A. You read that correctly.</p> <p>16 Q. And then I asked you about a narrower and</p> <p>17 specific question that I wanted to anchor your</p> <p>18 testimony to. And that question was, "Would you</p> <p>19 dispute that radiologists --</p> <p>20 A. Are you reading or is this something new?</p> <p>21 Q. Something new.</p> <p>22 A. Go ahead.</p> <p>23 Q. "Radiologists do not diagnosis</p> <p>24 asbestos-related disease and are not responsible for</p> <p>25 diagnosing asbestos-related disease?</p>	<p style="text-align: right;">Page 48</p> <p>1 your July 22 deposition, correct?</p> <p>2 MR. BECHTOLD: Misstates --</p> <p>3 THE WITNESS: Before I refreshed my recollection and</p> <p>4 going back and getting the facts.</p> <p>5 MR. BECHTOLD: Misstates the testimony.</p> <p>6 Q. (By Mr. Duerk) Sir, in terms of your</p> <p>7 declaration itself, I'm looking at tab 17, what's</p> <p>8 been marked as Exhibit 108 here. I'm looking at</p> <p>9 paragraph 10. Do you see that?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Paragraph 10 says, "After passage</p> <p>12 of the Affordable Care Act, B Reader qualified</p> <p>13 physicians may diagnose asbestosis, pleural</p> <p>14 thickening and pleural plaques based on review of</p> <p>15 plain chest x-rays of individuals, and individuals</p> <p>16 so diagnosed by B Reader physicians are eligible for</p> <p>17 Medicare benefits under the amendments to the Social</p> <p>18 Security Act enacted by the Affordable Care Act."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. So your declaration says that B</p> <p>22 Readers may diagnosis; not that a B Read equals a</p> <p>23 diagnosis, correct?</p> <p>24 A. That's what -- I'm sorry, ask the</p> <p>25 question again.</p>

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<p style="text-align: right;">Page 49</p> <p>1 Q. You said that B Readers may diagnosis.</p> <p>2 A. Here?</p> <p>3 Q. In your declaration.</p> <p>4 A. Yeah, right.</p> <p>5 Q. Right. B Readers may diagnosis; not that</p> <p>6 a B Read equals a diagnosis, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And in the language of the</p> <p>9 Affordable Care Act itself, Section 1881A, and I'm</p> <p>10 handing you a copy here, I'm looking at page 2. I'm</p> <p>11 looking at individuals described under the</p> <p>12 Affordable Care Act. So right in the middle of the</p> <p>13 page do you see the section Individual Described. I</p> <p>14 believe we read this into the record earlier.</p> <p>15 A. Yes, we did.</p> <p>16 Q. Individual described. In general, an</p> <p>17 individual described in this paragraph is any</p> <p>18 individual who is diagnosed with one or more</p> <p>19 conditions described in subparagraph B.</p> <p>20 Did I read that correctly?</p> <p>21 A. Yep.</p> <p>22 Q. Okay. So at least in terms of the law,</p> <p>23 the law says that an individual must have a</p> <p>24 diagnosis of asbestos-related disease, correct?</p> <p>25 A. That's one condition. That's not the --</p>	<p style="text-align: right;">Page 51</p> <p>1 this way. Sir, in terms of the enforcement of this</p> <p>2 law and its provisions, enforcement of the law comes</p> <p>3 from the Social Security Administration, correct?</p> <p>4 A. Medicare.</p> <p>5 Q. Medicare?</p> <p>6 A. And CMS.</p> <p>7 Q. And CMS and the Social Security</p> <p>8 Administration have a field office in Kalispell,</p> <p>9 Montana to the best of your knowledge?</p> <p>10 A. Right.</p> <p>11 Q. Okay. And the Medicare claim forms, the</p> <p>12 EHH forms, are filled out and signed by Dr. Black</p> <p>13 and providers at the CARD Clinic to the best of your</p> <p>14 knowledge, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And those Medicare claim forms, to the</p> <p>17 best of your knowledge, are then submitted to the</p> <p>18 Social Security Administration field office in</p> <p>19 Kalispell, Montana?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. Have you ever spoken with any of</p> <p>22 the field office personnel?</p> <p>23 A. No, no.</p> <p>24 Q. Okay. You're not aware of the policies</p> <p>25 and procedures they have for handling CARD Medicare</p>
<p style="text-align: right;">Page 50</p> <p>1 exclusive.</p> <p>2 Q. Let's go directly to the conditions. The</p> <p>3 conditions described are asbestosis, pleural</p> <p>4 thickening or pleural plaques, correct?</p> <p>5 A. Yep.</p> <p>6 Q. Okay. And so here in the law, in order</p> <p>7 to receive Medicare benefits, a patient must have a</p> <p>8 diagnosis. And this is a -- this is a proposition</p> <p>9 that you agreed with during your prior deposition,</p> <p>10 correct?</p> <p>11 A. Well, it all comes out with what the</p> <p>12 definition and diagnosis is. That's what it's all</p> <p>13 about. And under the statute, the diagnosis at</p> <p>14 large is a diagnosis by the CARD clinic or an</p> <p>15 affirmative determination by the B Reader. That is,</p> <p>16 at large, a diagnosis.</p> <p>17 Q. That is what you are saying, correct?</p> <p>18 But the law --</p> <p>19 A. And that's what the law says, too.</p> <p>20 Q. Sir, the law says an individual must have</p> <p>21 a diagnosis.</p> <p>22 A. I'm sorry. Now you're quibbling.</p> <p>23 Q. No, I'm not quibbling.</p> <p>24 MR. BECHTOLD: Argumentative.</p> <p>25 Q. (By Mr. Duerk) I'm going to offer it</p>	<p style="text-align: right;">Page 52</p> <p>1 claim forms?</p> <p>2 A. No.</p> <p>3 Q. You've never seen the program operations</p> <p>4 manual system?</p> <p>5 A. No.</p> <p>6 Q. Okay. You've never seen any e-mails back</p> <p>7 and forth?</p> <p>8 A. No.</p> <p>9 Q. Let me ask the question.</p> <p>10 A. I'm answering it anyways, no. Go ahead</p> <p>11 and ask the question.</p> <p>12 Q. I'm sure you've seen some e-mails before,</p> <p>13 but here's the question. You've never seen any</p> <p>14 e-mails between the CARD Clinic and the Social</p> <p>15 Security Administration field office personnel,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And you've not seen any e-mails</p> <p>19 recently between the CARD Clinic and Social Security</p> <p>20 Administration as recently as two weeks ago,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. So if I told you that the Social Security</p> <p>24 Administration insisted that CARD patients have a</p> <p>25 diagnosis of asbestos-related disease in order to be</p>

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<p style="text-align: right;">Page 53</p> <p>1 eligible for Medicare benefits, you've not seen that 2 communication? 3 A. Correct. 4 Q. And you would have no reason to disagree 5 with me, correct? 6 A. I have not seen it. 7 Q. Okay. In terms of how the Social 8 Security Administration treats these EHH Medicare 9 claim forms, that's not a job that you ever had, 10 correct? 11 A. Correct. 12 Q. And no one at CARD, prior to your 13 deposition, has shown you any communications 14 recently from SSA to CARD telling them that in order 15 to be Medicare eligible, a patient must have a 16 diagnosis, correct? 17 A. I have not seen any, no. And I've not 18 seen what you're describing. 19 Q. Sir, it was not your intent, Kathleen 20 Sebelius' intent or Christine Todd Whitman's intent, 21 to the best of your knowledge, to draft legislation 22 that would just make everyone in Libby Medicare 23 eligible if they did not have an asbestos-related 24 disease, correct? 25 A. That would not be my intent either.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. So if a patient does not have a diagnosis 2 of an asbestos-related disease, if a patient is not 3 sick from Libby amphibole, they should not be 4 submitting for Medicare benefits, no exceptions, 5 correct? 6 A. Unless a B Reader finds a positive 7 designation. 8 Q. Okay. Let's look at Clip 8. 9 10 (Whereupon, Clip No. 8 was played 11 for the jury) 12 13 Q. (By Mr. Duerk) Does that accurately 14 reflect your sworn testimony from last July? 15 A. Yes. 16 Q. Okay. Sir, last July, during your 17 testimony, there wasn't any testimony from you about 18 this provision that a B Read constituted a 19 diagnosis, correct? 20 A. Correct. To the best of my recollection, 21 correct. 22 Q. All right. And then in terms of your 23 foundation about CARD's methodology for diagnosing, 24 that's not something that you ever made an inquiry 25 about, correct?</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. It was also never your intent to 2 make it easier to defraud the Medicare program based 3 on any provisions that you put in the Affordable 4 Care Act? 5 A. Correct. 6 Q. There is no provisions stated in Section 7 1881 of the Affordable Care Act that creates an 8 exception for a patient to be eligible for Medicare 9 benefits without a diagnosis, correct? 10 A. Well, I don't want to quibble with 11 myself. It gets around to a diagnosis. 12 Q. Let's do it this way. During your 13 deposition last July in 2022, there was some 14 testimony to that point, correct? 15 A. I guess. 16 Q. Well, I'll play you what you said at that 17 time, okay? 18 MR. DUERK: This is Clip 6. 19 20 (Whereupon, Clip No. 6 was played 21 for the jury) 22 23 Q. (By Mr. Duerk) Did that accurately refer 24 to your testimony from last July? 25 A. It did.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct. 2 Q. In terms of the specifics about the 3 intricacies of a diagnosis of asbestos-related 4 disease, you don't claim to understand what's 5 required for a diagnosis of ARD, correct? 6 A. Correct. 7 Q. In terms of the American Thoracic Society 8 standards, are you aware that Dr. Black and other 9 CARD employees have testified that in order to 10 establish a diagnosis of asbestos-related disease, 11 that requires more than just a B Read? 12 A. I'm not aware of that. 13 Q. Okay. Are you aware that according to 14 the sworn testimony of Dr. Black, in order to have a 15 valid diagnosis of asbestos-related disease, a 16 patient needs either a chest x-ray or a CT scan 17 interpreted showing an asbestos-related disease, 18 they need exposure history showing that the 19 individual was exposed to asbestos at some point, 20 and the patient needs a differential diagnosis 21 ruling out all other possible causes of those 22 radiographic findings? 23 A. That's a long question. Can you shorten 24 that up, please? 25 Q. I can. I'll represent to you that under</p>

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<p style="text-align: right;">Page 57</p> <p>1 the American Thoracic Society guidelines, a</p> <p>2 diagnosis requires exposure history, a CT or chest</p> <p>3 x-ray showing disease and a differential diagnosis</p> <p>4 ruling out other potential causes. Were you aware</p> <p>5 of that?</p> <p>6 A. No.</p> <p>7 Q. And would you defer to Dr. Black and</p> <p>8 other medical professionals about what is required</p> <p>9 for a diagnosis of an asbestos-related disease?</p> <p>10 A. Dr. Black's a physician. I trust</p> <p>11 Dr. Black.</p> <p>12 Q. All right. Would you also trust the</p> <p>13 NIOSH certified B Readers, the radiologists, M.D.</p> <p>14 physicians that over-read all of that?</p> <p>15 A. I have no idea because I don't know of</p> <p>16 them. I know Dr. Black.</p> <p>17 Q. Sir, were you aware that the CARD B</p> <p>18 Readers, in this case, NIOSH certified B Readers,</p> <p>19 when they learned of CARD's practice of saying that</p> <p>20 their B Reads served as the basis of diagnosis left</p> <p>21 their contracts and will not be reading for CARD</p> <p>22 anymore?</p> <p>23 A. I'm not aware of that.</p> <p>24 MR. BECHTOLD: Objection, misstates the evidence.</p> <p>25 Q. (By Mr. Duerk) Sir, have you heard any</p>	<p style="text-align: right;">Page 59</p> <p>1 is the jury's job in this current action to look at</p> <p>2 all of the facts, look at what the B Readers have</p> <p>3 said, what the B Readers have done, to look at all</p> <p>4 the --</p> <p>5 A. Of course, that's a different issue.</p> <p>6 You've asked me a different question.</p> <p>7 Q. All right.</p> <p>8 A. Those are two different points.</p> <p>9 Q. So, sir, do you know what a B Reader is?</p> <p>10 A. I have an idea.</p> <p>11 Q. Okay. What is your idea?</p> <p>12 A. It's a pulmonologist or somebody who's</p> <p>13 qualified to determine whether or not there's a</p> <p>14 positive or negative reading of an x-ray or a CT</p> <p>15 scan.</p> <p>16 Q. All right.</p> <p>17 A. With respect to asbestos.</p> <p>18 Q. And sir --</p> <p>19 A. A doctor.</p> <p>20 Q. A doctor. Yep, an MD doctor?</p> <p>21 A. An MD doctor, anesthesiologist who is an</p> <p>22 MD doctor. It could be an anesthesiologist or and</p> <p>23 MD doctor.</p> <p>24 Q. Are you aware of what a B Reading</p> <p>25 physician is indicating when they find signs of an</p>
<p style="text-align: right;">Page 58</p> <p>1 information about B Readers, Dr. Kanne, Dr. Meyer</p> <p>2 Dr. Lynch in this case who once served on CARD's</p> <p>3 panel of expert outside NIOSH B Readers?</p> <p>4 A. No.</p> <p>5 Q. Would it cause you any concern if CARD's</p> <p>6 thoracic radiologist B Readers, when they learned</p> <p>7 about this B Rad diagnosis practice at CARD,</p> <p>8 terminated their contracts with the Center for</p> <p>9 Asbestos-related Disease?</p> <p>10 A. I would have to know the facts. I can't</p> <p>11 answer that without more facts.</p> <p>12 Q. All right. If those facts were true and</p> <p>13 those B Readers have all testified under oath that</p> <p>14 their reads do not constitute a diagnosis nor could</p> <p>15 they constitute a diagnosis of asbestos-related</p> <p>16 disease, would that concern you?</p> <p>17 A. You're assuming an answer and I would</p> <p>18 need more facts. I cannot answer that question.</p> <p>19 Q. Okay. I can provide more facts. Are you</p> <p>20 aware of what --</p> <p>21 A. You're not giving me enough. I'm would</p> <p>22 have to know of independent examination,</p> <p>23 investigation and inquiry before I was able to</p> <p>24 answer that question.</p> <p>25 Q. Right. And do you understand that that</p>	<p style="text-align: right;">Page 60</p> <p>1 abnormality or a positive B Read when they look at</p> <p>2 CARD patient films?</p> <p>3 A. No, I don't know.</p> <p>4 Q. Okay. So --</p> <p>5 A. I'm not a doctor.</p> <p>6 Q. Understood. And Senator Baucus, if it</p> <p>7 turned out that when B Reading physicians were</p> <p>8 looking for abnormalities, they would note all</p> <p>9 abnormalities, not just asbestos-related</p> <p>10 abnormalities in their reports?</p> <p>11 A. What's the question?</p> <p>12 Q. Were you aware of that?</p> <p>13 A. No.</p> <p>14 Q. Okay. Sir, were you aware that a</p> <p>15 positive B Read may indicate abnormalities like</p> <p>16 emphysema or COPD or a history of smoking</p> <p>17 cigarettes?</p> <p>18 A. I have no idea. All I know is if there's</p> <p>19 a -- a doctor found a positive indication of</p> <p>20 asbestos, irrespective of emphysema or the others,</p> <p>21 asbestos, that's sufficient.</p> <p>22 Q. All right. Sir, are you aware that when</p> <p>23 B Readers send their B Read reports back to CARD,</p> <p>24 there isn't any indication on that form that says</p> <p>25 whether or not that B Reader believes the patient</p>

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<p style="text-align: right;">Page 61</p> <p>1 has an asbestos-related disease?</p> <p>2 A. I think that's accurate. I think that's</p> <p>3 accurate.</p> <p>4 Q. All right. So a doctor, a B Reading</p> <p>5 physician, may send a report back to CARD that</p> <p>6 merely says there's an abnormality of emphysema.</p> <p>7 Are you aware of that possibility?</p> <p>8 MR. BECHTOLD: Foundation.</p> <p>9 THE WITNESS: I'm also aware of the statute that says</p> <p>10 if a B Read -- if The B Reader determines a positive</p> <p>11 indication, the statute stays that, in effect, that it</p> <p>12 sufficient for coverage.</p> <p>13 Q. (By Mr. Duerk) All right. And, sir, I</p> <p>14 understand that that's what your testimony is here</p> <p>15 today. And it's not your intent to have a B Reader</p> <p>16 find that a patient has no asbestos-related disease</p> <p>17 and still be submitted for Medicare coverage,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. During your deposition last time,</p> <p>21 we talked about a hypothetical involving a patient</p> <p>22 with a fractured rib. Sir, I'll represent to you</p> <p>23 that a fractured rib shows up as an abnormality on a</p> <p>24 B Read. Do you have any reason to disagree with</p> <p>25 that?</p>	<p style="text-align: right;">Page 63</p> <p>1 fraudulent, correct?</p> <p>2 A. Well, fraud is intent. So there may not</p> <p>3 be intent to defraud. It could be a mistake. It</p> <p>4 could be oversight. So I don't know if that's fraud</p> <p>5 or not. That's a legal determination.</p> <p>6 Q. Sir, I'll go ahead and go about it this</p> <p>7 way. I'm going to play for you video clip 11.</p> <p>8 Please tell me if this is an accurate reflection of</p> <p>9 your testimony.</p> <p>10 A. I suppose it's in here in the deposition.</p> <p>11</p> <p>12 (Whereupon, Clip No. 11 was</p> <p>13 played for the jury)</p> <p>14</p> <p>15 Q. (By Mr. Duerk) Did that accurately</p> <p>16 reflect your sworn testimony?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And, sir, have you ever seen</p> <p>19 any correspondence from the CARD Clinic where the</p> <p>20 CARD Clinic indicated to its own patients that the</p> <p>21 patient did not have a diagnosis of asbestos-related</p> <p>22 disease and yet they were submitting that patient</p> <p>23 for Medicare benefits for life anyway?</p> <p>24 A. I'm unaware.</p> <p>25 Q. Did you ever see any correspondence from</p>
<p style="text-align: right;">Page 62</p> <p>1 A. I have no reason to agree or disagree. I</p> <p>2 just have no -- I'm not competent to answer that</p> <p>3 question.</p> <p>4 Q. In your mind, if a patient suffered from</p> <p>5 a fractured rib, but no signs of asbestos-related</p> <p>6 disease, would it be proper to submit that patient</p> <p>7 for lifetime Medicare benefits when they are not</p> <p>8 sick with asbestos-related disease?</p> <p>9 A. It would not be proper.</p> <p>10 Q. Right. Sir, in terms of that fractured</p> <p>11 rib patient, we discussed that hypothetical during</p> <p>12 your deposition in July of last year, right?</p> <p>13 A. I vaguely remember all of us talked about</p> <p>14 fractured ribs, yes.</p> <p>15 Q. Okay. So, in your mind, in patients with</p> <p>16 a rib fracture, if a doctor had submitted Medicare</p> <p>17 claims for patients knowing that those individual</p> <p>18 patients did not have a diagnosis of</p> <p>19 asbestos-related disease, you would find that</p> <p>20 problematic?</p> <p>21 A. Right.</p> <p>22 Q. In fact, if a doctor submitted patients</p> <p>23 with a rib fracture or other non-related asbestos --</p> <p>24 or problems not related to asbestos for lifetime</p> <p>25 Medicare benefits, you would find that to be</p>	<p style="text-align: right;">Page 64</p> <p>1 the CARD Clinic where CARD indicated to the patient</p> <p>2 that a B Reader found an abnormality but this had no</p> <p>3 indication of any health condition that should cause</p> <p>4 the patient any concern but the patient was still</p> <p>5 being submitted for Medicare benefits?</p> <p>6 A. I'm not aware of any.</p> <p>7 Q. Were you aware, sir, that in over 100</p> <p>8 individual patient cases, CARD told the patient that</p> <p>9 they didn't have a diagnosis of asbestos-related</p> <p>10 disease from CARD or anywhere else, that the patient</p> <p>11 did have an abnormality that was identified by an</p> <p>12 outside Reader, but that that abnormality was</p> <p>13 nothing that had significant health implications nor</p> <p>14 is it considered a diagnosis of asbestos-related</p> <p>15 disease?</p> <p>16 MR. BECHTOLD: Misstates the testimony.</p> <p>17 THE WITNESS: I'm unaware of anything.</p> <p>18 Q. (By Mr. Duerk) Okay. And would that</p> <p>19 cause concern in your mind?</p> <p>20 A. I would have to have more information.</p> <p>21</p> <p>22 (Pause)</p> <p>23</p> <p>24 Q. Doctor, we also talked about a different</p> <p>25 kind of hypothetical in your July 2022 deposition</p>

<p style="text-align: right;">Page 65</p> <p>1 that I'd like to cover that today, okay? Last 2 summer, we talked about a hypothetical patient who 3 went to the -- goes to a clinic to determine whether 4 or not there's a diagnosis of asbestos-related 5 disease. And during that time frame, the patient is 6 never found to have signs of an abnormality on 7 either a chest x-ray or a CT scan by any 8 radiologist.</p> <p>9 In this hypothetical, the patient returns 10 to the clinic year after year after year, and his CT 11 scans and his chest x-rays are read by radiologists, 12 thoracic radiologists, pulmonologists, and every 13 single time, over a multi-year period, that patient 14 is always negative for asbestos-related disease.</p> <p>15 If that patient were submitted for 16 Medicare benefits, would that concern you?</p> <p>17 A. Yes.</p> <p>18 Q. Why?</p> <p>19 A. Because the statute is not intended -- 20 the statute is not intended to cover a person in 21 that situation. Although I will say, that often, as 22 I understand it, even though I'm not a doctor, that 23 the disease often is not detected in the early 24 stages but can be detected at later stages in 25 subsequent years.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. All right. Now, I'd like you to look at 2 page 62 of your deposition.</p> <p>3 A. What tab is that again?</p> <p>4 Q. Sorry, it's tab 20. It's behind tab 20.</p> <p>5 There we go. I'm looking at page 62. I'm looking 6 at line 7.</p> <p>7 A. Okay.</p> <p>8 Q. I'm starting at line 7.</p> <p>9 Let's go into a separate hypothetical.</p> <p>10 Assume there's the same doctor who sees a patient 11 and that patient had some experience in Libby, 12 Montana, so that they were in Libby for the 13 requisite period of time, and the doctor sent that 14 patient's x-rays and CT scans out for a read from 15 either a B Reader or a thoracic radiologist, a 16 pulmonologist, someone with experience reading 17 films, and all of those films, all of those chest 18 x-rays came back as negative for asbestos-related 19 disease; not just once, but multiple times, year 20 after year.</p> <p>21 Assuming there was no outside evidence 22 according to radiologists and outside experts 23 showing any signs consistent with asbestos-related 24 disease, would you find it problematic if that 25 doctor submitted that patient for Medicare benefits?</p>
<p style="text-align: right;">Page 66</p> <p>1 Q. Understood. With this hypothetical 2 patient, I'd like for you to assume that they were 3 scanned starting in 2013 -- I'm sorry, starting in 4 2015, and they were scanned in 2016 and 2017.</p> <p>5 Ultimately, that patient was sent to the Mayo 6 Clinic, and not only was the patient scanned again 7 at the Mayo Clinic, but the radiologists at Mayo 8 went back and reviewed all prior scans.</p> <p>9 In this hypothetical, the Mayo Clinic 10 found no signs of asbestos-related disease during 11 the current scan, the most recent scan, but also no 12 signs of asbestos-related disease going all the way 13 back to the patient's earliest scan.</p> <p>14 If that patient were submitted for 15 Medicare benefits, would it concern you?</p> <p>16 MR. BECHTOLD: Foundation.</p> <p>17 THE WITNESS: Well, that's not this case. That's a 18 hypothetical. And I just -- it's hard to deal with 19 hypotheticals.</p> <p>20 Q. (By Mr. Duerk) I understand. I would 21 like you to assume that that hypothetical is true.</p> <p>22 A. Of course you would. For your purposes, 23 yes. I can't -- I just don't know. It's a 24 hypothetical. I can't -- it's hard for me to answer 25 a hypothetical.</p>	<p style="text-align: right;">Page 68</p> <p>1 Answer, yeah, if there's no basis for finding a 2 disease, yeah.</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Now, we talked about -- or Mr. Bechtold 6 talked about outside pulmonologists and outside 7 radiologists and outside doctors not necessarily 8 understanding Libby asbestos and asbestos-related 9 disease from Libby's asbestos, do you remember your 10 testimony there?</p> <p>11 A. Yeah.</p> <p>12 Q. And I believe we looked at some 13 congressional testimony about doctors outside of 14 Libby really not understanding the problem; is that 15 right?</p> <p>16 I believe that testimony on the 17 Congressional Record was given in support of the 18 changes in the Affordable Care Act, correct?</p> <p>19 A. I don't know about changes. They 20 supported the provision that was put in there.</p> <p>21 Q. Correct. I'm sorry, the provision that 22 was to be put in the act. And I think we could 23 probably determine when that -- when you gave that 24 testimony or when --</p> <p>25 A. Oh, yeah it would be in there.</p>

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<p style="text-align: right;">Page 69</p> <p>1 Q. Do you mind referring to the record just 2 to see what year that testimony was provided? 3 A. It would have been prior to the passage 4 of the Act, so in 2000 -- after 2010. What tab is 5 that? Where do I find it? 6 MR. BECHTOLD: Tab 3. 7 THE WITNESS: Okay. Oh, this is in '09. 8 Q. (By Mr. Duerk) So the remarks that you 9 made on the record about other physicians outside of 10 Libby not necessarily understanding the disease, 11 those remarks were made in 2009; is that correct? 12 A. It looks like it. 13 Q. Okay. And in terms of any conversations 14 you've had with outside physicians or radiologists, 15 you didn't communicate with outside doctors about 16 their understanding of Libby disease? 17 A. Oh, I did. 18 Q. In terms of any conversations with 19 outside doctors, aside from Dr. Whitehouse -- 20 A. Other than Whitehouse, Holm, I think his 21 name is, in Texas. 22 Q. Holm in Texas? 23 A. I think so. 24 Q. But aside from Dr. Whitehouse who worked 25 for the CARD Clinic, who did work with the CARD</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. Is that -- 2 MR. DUERK: I'm seeing a note that we should take a 3 break so we will take a break. 4 VIDEO OPERATOR: We're going off the record. The 5 time is 12:00 p.m. 6 7 (Whereupon a recess was taken) 8 9 VIDEO OPERATOR: We are back on the record. The time 10 is 12:02 p.m. 11 Q. (By Mr. Duerk) You said just in terms of 12 your experience with physicians from the Mayo 13 Clinic, physicians from the Mayo Clinic aren't whack 14 doctors, correct? 15 A. Correct. Better not. I go there. 16 Q. Doctor, in terms of the way in which 17 patients that are enrolled for Medicare, there are a 18 couple of different definitions and concepts within 19 the Social Security Act procedures, And I just want 20 to see if they square with your understanding of how 21 a disease is diagnosed, okay? 22 In the Medicare provisions, in the POMS, 23 there's reference to a physician as a provider. And 24 the provider, the diagnosing physician, is one who 25 takes into account all of the information about that</p>
<p style="text-align: right;">Page 70</p> <p>1 Clinic, and this doctor in Texas, Dr. Holm, did you 2 speak with any other outside physician? 3 A. I did not but my staff could well have, 4 and I have very good staff, and I put a lot on my 5 staff to get the facts. 6 Q. All right. But in terms of -- 7 A. Personally, no. 8 Q. Personally? Right. And so in terms of 9 this understanding that there were outside 10 physicians in Libby and the surrounding area in 2009 11 at the time you gave this testimony that didn't 12 understand Libby disease, aside from Dr. Whitehouse, 13 a CARD physician and perhaps Dr. Holm, you, 14 yourself, didn't speak with other outside 15 physicians? 16 A. No, but it's common knowledge. It was 17 common knowledge. I mean, lots of people knew. 18 Nobody disputed that. 19 Q. Back in 2009 is when you made those 20 statements on the record. Since 2009, have you 21 spoken with any other outside radiologists, 22 pulmonologists, thoracic radiologists or any other 23 doctors who have looked at, examined, scanned and 24 interpreted images of CARD patients? 25 A. No.</p>	<p style="text-align: right;">Page 72</p> <p>1 patient before rendering a diagnosis. Does that 2 concept make sense to you? 3 A. Yeah. 4 MR. BECHTOLD: Foundation, relevance. 5 Q. (By Mr. Duerk) In terms of the types of 6 information that the provider needs to take into 7 account, they take into account, the scans, or the 8 CT scans, or the chest x-rays, the provider also 9 performs an in-person assessment and looks at 10 medical history. 11 Are those concepts, do they square with 12 your understanding of what a provider does? 13 A. Yes. 14 Q. Okay. In the Social Security 15 Administration Program Operation Manual Systems, 16 that's what I'll call the POMS, it's the provider, 17 it's the doctor who has the most information about 18 the patient who makes that diagnosis. 19 Does that square with your understanding 20 of how things work? 21 A. Yeah. 22 MR. BECHTOLD: Foundation, relevance. 23 Q. (By Mr. Duerk) All right. If the 24 physician, if the doctor with the most information 25 about a patient, the diagnosing physician, the</p>

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<p style="text-align: right;">Page 73</p> <p>1 doctor who has read the CT scan and the chest x-ray, 2 the doctor who completed the patient assessment, the 3 doctor who reviewed the exposure history of the 4 patient, the diagnosing physician, if that doctor 5 says to the patient, you're not sick, you don't have 6 asbestos-related disease, based on your 7 understanding of the Affordable Care Act, would it 8 be proper for that patient to be submitted for 9 Medicare benefits?</p> <p>10 A. Are we talking about generally? Are we 11 talking about this Libby, the Libby cases? What are 12 we talking about?</p> <p>13 Q. Libby Cases.</p> <p>14 A. No, that's -- the question is way too 15 long. I couldn't remember it all. Can you ask a 16 simpler question?</p> <p>17 Q. Sure. If we've got the doctor with the 18 most --</p> <p>19 A. Now, we're talking about Libby?</p> <p>20 Q. We're talking about Libby.</p> <p>21 A. Okay.</p> <p>22 Q. If the doctor with the most information, 23 who's seen the CT scans, he's read and interpreted 24 them, if the doctor who has taken the exposure 25 history, who's done the inpatient assessment, if</p>	<p style="text-align: right;">Page 75</p> <p>1 the exposure history of the patient, the diagnosing 2 physician in this instance says, quote, you are not 3 sick, you don't have asbestos-related disease." 4 Based on your understanding of the Affordable Care 5 Act, would it be proper for that patient to be 6 submitted for Medicare benefits?</p> <p>7 A. That's what I said there, but since then 8 I've gone back --</p> <p>9 Q. Sorry, I'm not done.</p> <p>10 A. Okay, go ahead.</p> <p>11 Q. Answer, if the patient does not have 12 disease, the answer is no.</p> <p>13 Did I read that correctly?</p> <p>14 A. You did, but I'm going to say that that 15 we have more facts now. And as an expert witness, 16 I'm supposed to have more facts, and I have more 17 facts. And when I went back and read the statute 18 and refreshed my recollection for the statute, so 19 that's why my answer is not -- will be different now 20 than what I said then.</p> <p>21 Q. The question that I asked you back then 22 starting on line 22, page 58, and so consistent with 23 the original purpose of the --</p> <p>24 A. I'm sorry, where are you?</p> <p>25 Q. Page 58, line 22.</p>
<p style="text-align: right;">Page 74</p> <p>1 that doctor seeing all of the information tells the 2 patient, you're not sick, you don't have 3 asbestos-related disease, should that patient be 4 submitted for Medicare?</p> <p>5 A. Might. Yes, possibly.</p> <p>6 Q. Might? Why?</p> <p>7 A. Because it was a different doctor. A 8 different doctor is involved here. The statute says 9 you're either diagnosed by CARD or by a B Reader. 10 Technically, the term diagnosis is not usable in a B 11 Reader, so it depends. The point here in the 12 statute is not to narrow the determination down to 13 one doctor and one doctor's decision only.</p> <p>14 Q. Okay. Let's look at page --</p> <p>15 A. So that's why I asked the question the 16 way I did.</p> <p>17 Q. Sure. Let's look at page 58, lines 8.</p> <p>18 A. 58.</p> <p>19 Q. Line 8.</p> <p>20 A. Yeah.</p> <p>21 Q. "Within the context of this hypothetical, 22 let's say that the doctor with the most information, 23 the diagnosing physician, the doctor who has the CT 24 scan and the chest x-ray, the doctor who's completed 25 an inpatient assessment, the doctor who's reviewed</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Okay.</p> <p>2 Q. And so consistent with the original 3 purpose of the EHH provisions and the Affordable 4 Care Act, without a diagnosis, that patient 5 shouldn't be deemed Medicare eligible. Your answer, 6 without a diagnosis, that's correct.</p> <p>7 That's what you said last year under 8 oath, correct?</p> <p>9 A. That's what I said back then.</p> <p>10 Q. All right.</p> <p>11 A. But I'm -- it's more complicated than 12 you're implying there.</p> <p>13 Q. Senator Baucus, in your mind, would it 14 ever be proper to knowingly submit a patient for 15 Medicare benefits when the physician knew that 16 patient wasn't sick with an asbestos-related 17 disease?</p> <p>18 A. It would be problematic. Again, I would 19 want more facts.</p> <p>20 Q. Right. And you've described that 21 scenario in the past as fraud, correct?</p> <p>22 A. I've used the word in the prior 23 deposition, and it would be fraudulent with all 24 things considered if both the B Reader and, in my 25 hypothetical, both the B Reader and the CARD</p>

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<p style="text-align: right;">Page 77</p> <p>1 physician intentionally knew there was no disease, 2 that would be fraud. 3 Q. Right. Right. So if the B Reader saw 4 that the patient didn't have an asbestos-related 5 disease, but instead chronic obstructive pulmonary 6 disease and CARD knew that, and they submitted a 7 Medicare claim form for lifetime health care 8 benefits anyway, that would be fraud, right? 9 A. I don't know. I'd have to have the 10 facts. I can't answer that question. That's way 11 too complicated; too many subsections to that 12 question. 13 Q. In terms of the facts in this case, did 14 you ask for more facts before you rendered your 15 expert witness opinions in this matter? 16 A. Did I ask for more facts? 17 Q. Yes. 18 A. I asked myself and went back and I 19 refreshed my recollection of the statutes and my 20 recollection. 21 Q. Did CARD provide you with more facts? 22 A. No. 23 Q. Did CARD provide you with any medical 24 records related -- 25 A. No.</p>	<p style="text-align: right;">Page 79</p> <p>1 that testimony that you've heard about before? 2 A. I have not heard about anything about 3 that. 4 Q. All right. And if there was a patient 5 who did actually fall into that category who has 6 been told by CARD repeatedly, you are not sick, you 7 don't have asbestos-related disease, and, yet, CARD 8 submitted her for Medicare benefits for life so that 9 she could get gym membership paid for by the people 10 of the United States, would you find that 11 problematic? 12 A. I find it concerning, but I need more 13 facts before making a decision. 14 Q. Right. And in terms of the facts related 15 to this case, aside from your declaration and the 16 exhibits that I learned you were going to be talking 17 about today, you haven't seen any other written 18 information about those CARD patients, fair? 19 A. That's true. 20 Q. Okay. Sir, I apologize if any of my 21 questions seem disrespectful here, but what I'm 22 trying to get at is, I do appreciate the work that 23 you've done for the people of Libby. I do. But is 24 it benefitting the people of Libby if there's fraud 25 in the system being perpetrated by CARD to let that</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Did they provide you with any medical 2 records related to any of the individual CARD 3 patients that are the subject of the false claims 4 act case here? 5 A. No. 6 Q. Okay. In terms of the Complaint itself, 7 the Amended Complaint, have you seen what the 8 precise allegations are against the CARD claim? 9 A. No. I just want to help people in Libby. 10 That's my concern. 11 Q. I understand. And you understand, sir, 12 that this case is not about the people in Libby who 13 are sick with an asbestos-related disease. This 14 fraud case is a case about the people in Libby who 15 are not sick. Do you understand that? 16 A. No. 17 Q. Okay. Okay. That's helpful. So if I 18 were to tell you that there is deposition testimony 19 from CARD patients who have said under oath that 20 they are aware, one patient in particular I'm 21 thinking of, has stated she's aware that she doesn't 22 have an asbestos-related disease because CARD told 23 her she doesn't have an asbestos-related disease, 24 and, yet, nevertheless, she's still getting gym 25 membership benefits under the Medicare program. Is</p>	<p style="text-align: right;">Page 80</p> <p>1 fraud continue? 2 A. I'm unaware of any fraud. 3 Q. I'm well aware of that. However, my 4 question stands, does it benefit anybody in Libby if 5 there's fraud in the way that CARD submits people 6 for Medicare benefits to let that practice continue? 7 A. I'm against fraud. 8 Q. Understood. And you have not seen any of 9 the evidence of fraud in this case? 10 A. Correct. 11 Q. Okay. So is it fair to say that without 12 seeing any evidence of the alleged fraudulent 13 conduct in this case, you wouldn't be able to make 14 up your mind one way or another whether fraud had 15 occurred? 16 A. Correct. 17 Q. Okay. And CARD has not provided you with 18 any evidence other than what we've looked at on the 19 record today, is that fair? 20 A. Right. 21 Q. Okay. 22 MR. DUERK: If we could talk a short break, I might 23 be able to figure out how to shorten this up. 24 VIDEO OPERATOR: We're going off the record. The 25 time is 12:14 p.m.</p>

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<p style="text-align: right;">Page 81</p> <p>1 2 (Whereupon a recess was taken) 3 4 VIDEO OPERATOR: We are back on the record. The time 5 is 12:28 p.m. 6 Q. (By Mr. Duerk) Senator Baucus, I would 7 like you to look at what I'll mark as Exhibit 160 in 8 this case. It's at tab 24 in your binder. 9 10 (Deposition Exhibit No. 160 was marked 11 for identification) 12 13 Q. (By Mr. Duerk) Sir, if you would look at 14 page 2 of Exhibit 160. 15 A. Yep. 16 Q. Do you see an e-mail from Tanis Hernandez 17 at the top and a number of other individuals? 18 A. I do, down at the bottom. 19 Q. Yep. The subject is Baucus mailing? 20 A. Yep. 21 Q. Sir, I can't imagine that you have seen 22 this e-mail before, but what I'm hoping to do is 23 show you this e-mail to try to refresh your 24 recollection about the subject here, it says Baucus 25 mailing.</p>	<p style="text-align: right;">Page 83</p> <p>1 for identification) 2 3 Q. (By Mr. Duerk) Do you see what appears 4 to be the mailing referenced in the prior e-mails 5 with your signature on it? 6 A. Yes. 7 Q. Okay. Does the website at the bottom of 8 the page, www.baucus.senate.gov, is that your -- was 9 that one of your e-mails? 10 A. I presume. 11 Q. Okay. And does this appear to be a true 12 and accurate copy of a mailing entitled, Dear 13 Friends that was sent out -- 14 A. As near as I can tell, yes. 15 Q. Okay. 16 MR. DUERK: So I would move to admit this exhibit. 17 Q. (By Mr. Duerk) If you would please start 18 from the beginning and just read this mailing, that 19 would be helpful, Senator. 20 A. "I'm so pleased to be writing you after 21 the passage of the health care reform bill that 22 would lower costs and provide quality affordable 23 health coverage to all Montanans. In addition, the 24 Patient Protection and Affordable Care Act sets up a 25 new system for screenings and medical care for</p>
<p style="text-align: right;">Page 82</p> <p>1 Sir, in about 2010, do you recall sending 2 out a community-wide mailer about the new provisions 3 in the Affordable Care Act to the residents of 4 Libby, Montana? 5 A. It is something I would do, but I do not 6 specifically remember this one. 7 Q. All right. If we could look at the first 8 page of Exhibit 160. It appears that there's a back 9 and forth about the subject here, Baucus mailing. 10 I'm looking at what I think is the very last e-mail 11 in this train from Tanis Hernandez to several other 12 people. 13 A. Are you at the top of the page? 14 Q. I am. It indicates that there are some 15 handwritten notes on the bottom of this mailing. 16 Sir, do you recall either the mailing itself or any 17 handwritten notes on the bottom of the mailing? 18 A. No. 19 Q. Okay. Let's do this. If we could turn 20 to the next tab. Find tab 25. What I'll do is mark 21 this -- oops, I think you might be one back -- 22 behind tab 25. 23 A. There it is. 24 Q. I'll mark this as Exhibit 161. 25 (Deposition Exhibit No. 161 was marked</p>	<p style="text-align: right;">Page 84</p> <p>1 people affected by asbestos-related disease. In 2 June 2009, the joint EPA Administrator Jackson with 3 the announcement that a 'public health emergency' 4 was declared at the Libby/Troy Superfund site, I 5 have been pushing for this since it was first 6 considered by the EPA in 2001. The public health 7 emergency triggers screening and medical care for 8 affected people. 9 Before Libby, this process had never been 10 used, so there's no system set up. But the 11 healthcare reform bill does just that. I wrote the 12 section of the bill that provides funding for 13 screening services. If a person is determined to 14 have an asbestos-related disease that requires 15 treatment, it allows that person to enroll in 16 Medicare. This program is permanent. In addition, 17 allots funds for a pilot program to provide 18 specialized medical services that are not covered by 19 Medicare. It will ensure that people affected by 20 asbestos-related disease from the W.R. Grace 21 operation in Libby, Montana will receive the 22 healthcare they need. 23 Now that healthcare reform bill is law, 24 we're working to get the system up and running 25 quickly. In the meantime, people who need screening</p>

Senator Max Baucus

<p style="text-align: right;">Page 85</p> <p>1 or medical care for asbestos-related disease can 2 enroll in the FLASH program, the Federal Libby 3 Asbestos Special Healthcare program, funded with the 4 \$6 million grant from the Department of Health and 5 Human Services that I secured in '09. This program 6 will provide coverage for services that are not 7 covered by other insurance or asbestos-related 8 disease programs. For details on how to enroll, 9 contact my office toll free at (800) 332-6106, or in 10 Kalispell at (406) 756-1150."</p> <p>11 Q. And, sir, is that your signature on this 12 mailer?</p> <p>13 A. It is. Well, it looks like it.</p> <p>14 Q. Looks like it. I would like to look at 15 the bottom of the page in Exhibit 161 and see if you 16 know the source of it. First, I'll read it to you 17 and tell me if I've read it correctly.</p> <p>18 "If you: 19 1) Have an asbestos-related disease 20 diagnosed by a medical provider; 21 2) Are NOT on Medicare; 22 3) Call 1-888-482-3128 and say. 23 'I want to sign up for Medicare coverage 24 due to my asbestos-related disease that resulted 25 from the Libby, Montana asbestos exposure.'"</p>	<p style="text-align: right;">Page 87</p> <p>1 have an asbestos-related disease diagnosed by a 2 medical provider, correct?</p> <p>3 A. Right.</p> <p>4 Q. All right. And in terms of the 5 conversation we've had back and forth, the provider 6 is the doctor or the healthcare facility --</p> <p>7 A. Right.</p> <p>8 Q. -- itself, correct?</p> <p>9 Nowhere on your mailing or this 10 handwritten note does it indicate that individuals 11 are eligible for Medicare based on a radiographic 12 report alone, correct?</p> <p>13 A. No, but that's the reason for the 14 telephone number, to get the facts.</p> <p>15 Q. Right. And when the Social Security 16 Administration is called about those facts, the 17 first fact that needs to be established is that the 18 patient has an asbestos-related disease diagnosed by 19 a medical provider, correct?</p> <p>20 A. Generally. I mean, it's -- the main 21 point is, the statute is there to help people. The 22 mailing's sent out to give notice, and here's a 23 telephone number to see if you qualify.</p> <p>24 Q. Right. Based on all of the material that 25 I've seen about Medicare benefits from your office,</p>
<p style="text-align: right;">Page 86</p> <p>1 First, did I read that correctly?</p> <p>2 A. Yes, you did.</p> <p>3 Q. Okay. And, sir, in terms of this 4 mailing, was this consistent with the messaging that 5 was being sent out to the people of Libby about the 6 passage of the Affordable Care Act?</p> <p>7 A. It's consistent, yeah.</p> <p>8 Q. Okay. And, sir, in terms of the 9 handwritten language there, is this also consistent 10 with what your understanding is about the way the 11 patients would report their condition to the Social 12 Security Administration to get Medicare coverage?</p> <p>13 A. It's a good start.</p> <p>14 Q. Okay. And to the best of your knowledge, 15 what else is required to submit to the Social 16 Security Administration to get Medicare coverage?</p> <p>17 A. Well, I don't know. I never brought it.</p> <p>18 Q. Do you have any understanding of what 19 CARD would submit in support of Medicare benefits 20 for its patients?</p> <p>21 A. No, I just trust them to do the right 22 thing.</p> <p>23 Q. And, at least, according to the e-mail 24 that we see and your mailing, it says that CARD 25 patients should report to Social Security if they</p>	<p style="text-align: right;">Page 88</p> <p>1 all of that material indicates that in order to get 2 Medicare, the person has to be sick due to 3 asbestos-related disease, is that your 4 understanding?</p> <p>5 A. Basically, yeah.</p> <p>6 Q. Yeah. And I've never seen, sir, a 7 mailing from your office that indicates that 8 patients who aren't sick due to an exposure to Libby 9 asbestos are eligible for Medicare, is that your --</p> <p>10 A. You've said you've never seen it, and I 11 trust you.</p> <p>12 Q. I haven't. But let me ask it this way. 13 Are you aware of any communication --</p> <p>14 A. No.</p> <p>15 Q. Sorry. Just for the record, I've got to 16 ask my question. But are you aware of any 17 communications sent by your office that told 18 individuals in Libby that they were eligible for 19 Medicare without being sick due to an exposure to 20 Libby asbestos?</p> <p>21 A. No.</p> <p>22 Q. Okay. And in terms of the communication 23 that you've received from CARD that you're aware of, 24 have you ever received any communication from CARD 25 that indicated to you that CARD was submitting</p>

Senator Max Baucus

<p style="text-align: right;">Page 89</p> <p>1 patients for Medicare benefits who CARD knew were 2 not sick due to an exposure to asbestos-related 3 disease? 4 A. I'm not aware of anybody. Nothing 5 provided. 6 Q. In terms of any communications from 7 Medicare or the Social Security administration -- 8 I'm know you know where I'm going, but I'll ask the 9 question -- have you ever seen any communication 10 from the Social Security Administration that 11 indicated that Social Security was okay giving 12 Medicare benefits to people that CARD and everyone 13 else knew were not sick with asbestos-related 14 disease? 15 A. No, I've never seen anything like that. 16 Q. And it is not your testimony here today 17 that it is okay for somebody without an 18 asbestos-related disease to get lifetime Medicare 19 benefits unless they've been exposed to Libby 20 asbestos and are actually sick with asbestos-related 21 disease due to that exposure, correct? 22 A. Correct. 23 MR. DUERK: Sir, thank you for your time today. I 24 have no further questions at this point. 25 MR. BECHTOLD: I just have a couple follow-ups.</p>	<p style="text-align: right;">Page 91</p> <p>1 that a diagnosis under the Act? 2 MR. DUERK: Objection, foundation, form, 3 nondisclosure, also calls for a legal interpretation. Go 4 ahead. 5 THE WITNESS: It's not -- it's technically not a 6 diagnosis, but it's sufficient for coverage. 7 Q. (By Mr. Bechtold) And you wrote the Act, 8 right? 9 A. Yes. 10 Q. And that was your intention? 11 A. Yes. B Readers positive -- a different 12 name -- a positive determination and it's 13 sufficient. 14 MR. BECHTOLD: Nothing further. Thank you. 15 VIDEO OPERATOR: That concludes this deposition. The 16 time is 12:42 p.m. 17 18 (Whereupon, the deposition concluded at 19 12:42 p.m. for the day) 20 21 (Signature waived) 22 23 24 25</p>
<p style="text-align: right;">Page 90</p> <p>1 2 REDIRECT EXAMINATION 3 4 BY MR. BECHTOLD: 5 Q. I'd like to take a look at Exhibit 161. 6 A. Which book? 7 Q. Right in front of you. 8 A. Where is 161? 9 Q. It's the one that you have right in front 10 of you now. It's your letter to the people from 11 Libby. 12 A. Okay. 13 Q. In the second paragraph, the third 14 sentence, it says, "I wrote a section of the bill 15 that provides funding for screening services." 16 Do you see that? 17 A. Second paragraph? Yeah, I do. 18 Q. So you wrote a section of the Act that we 19 looked at before, right, section -- 20 A. Right. 21 Q. -- 1881A, correct? 22 A. Uh-huh. 23 Q. And under Section 1881A, is it your 24 interpretation of asbestosis, pleural thickening or 25 pleural plaques is established by a B Reader? Is</p>	<p style="text-align: right;">Page 92</p> <p>1 C E R T I F I C A T E 2 3 STATE OF MONTANA) 4 : ss 5 COUNTY OF BEAVERHEAD) 6 I, Robyn Ori English, Freelance Court Reporter and 7 Notary Public for the State of Montana, residing in 8 Dillon, do hereby certify: 9 That I was duly authorized to and did swear in the 10 witness and report the deposition of Max Baucus, 11 in the above-entitled cause; that the foregoing pages of 12 this deposition constitute a true and accurate 13 transcription of my stenotype notes of the testimony of 14 said witness, all done to the best of my skill and 15 ability; that the reading and signing of the deposition by 16 the witness has been expressly waived. 17 I further certify that I am not an attorney nor 18 counsel of any of the parties, nor a relative or employee 19 of any attorney or counsel connected with the action, nor 20 financially interested in the action. 21 IN WITNESS WHEREOF, I have hereunto set my hand and 22 affixed by notarial seal on this, the ____ day of ____, 23 2023. 24 25</p>

Timothy Bechtold
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tim@bechtoldlaw.net

Attorneys for CARD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BNSF,

Plaintiff

vs.

CARD,

Defendant.

CV-19-40-M-DLC

**CARD'S INITIAL
DISCLOSURE SECOND
SUPPLEMENT**

**I. INDIVIDUALS WITH DISCOVERABLE INFORMATION WHOM
CARD MAY USE TO SUPPORT ITS CLAIMS AND DEFENSES**

1. Brad Black, CARD
2. Tracy McNew, CARD
3. Jim Lockey, Professor Emeritus, University of Cincinnati
4. Albert Miller, Professor of Clinical Medicine, Mt Sinai School of
Medicine
5. Tanis Hernandez, former administrative director at CARD
6. Henry Falk, former HHS

7. Cheryl Everhart, HHS
8. Theodore Larson, HHS
9. Max Baucus, former US Senator
10. Sonia Hymas, former SSA
11. Mary Lewandowski, SSA
12. Terra Whiteman, SSA
13. Art Frank, Drexel University
14. Jaime Szeinuk, Northwell
15. Jimmie Sevre, Kalispell, 406-314-0659, CARD patient
16. Gayla Benefield, Libby, 406-291-0376, CARD patient
17. Judy Woller, Ft. Mojave, AZ, 928-788-1755, CARD patient
18. Stephanie Shaw, CARD
19. Chris Ekstedt, CARD
20. Lee Morrisette, MD, CARD

II. DESCRIPTION OF DOCUMENTS AND TANGIBLE THINGS IN CARD'S POSSESSION THAT IT MAY USE TO SUPPORT ITS CLAIMS

1. Documents CARD produced to DHHS OGC

III. COMPUTATION OF DAMAGES

CARD does not believe that an award of damages is appropriate in this matter.

IV. INSURANCE AGREEMENTS

CARD has no insurance coverage for this action.

DATED May 8, 2023.

/s/ Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing via email attachment
on May 8, 2023, upon the following:

Adam Duerk
283 W. Front Street, Suite 203
Missoula, Montana 59802
duerk@knightnicastro.com

/s/Timothy M. Bechtold

EXHIBIT 5

Relator will supplement the record with a certified copy of the Excerpts of Transcript.

UNCERTIFIED DRAFT REALTIME TRANSCRIPT
NOT TO BE USED FOR VERBATIM CITATION

1 BNSF v. CARD, CV 19-40-M-DLC
2 HEARING ON MOTIONS - MONDAY, SEPTEMBER 12, 2022

3 REALTIME TEXT NOTICE

4 We, the party working with the court reporter's
5 realtime feed, understand that if we choose to use the
6 realtime text we are doing so with the understanding that it
is uncertified and contains no appearance page, contents page,
or certificate page.

7 We agree not to share, give, copy, scan, fax, email,
8 or in any way distribute this realtime text in any form,
9 written or computerized, to the press or any party. However,
our own experts, cocounsel, and staff may have internal use.

10 We further understand that the realtime text will
11 include discrepancies regarding page and line numbers when
comparing the realtime text to the certified transcript.

12 We further understand that the realtime text may
13 contain untranslated steno, reporter's notes in parentheses,
14 misspelled proper names, incorrect or missing Q/A symbols or
punctuation, and/or nonsensical English word combinations.
All such entries will be corrected on the certified
transcript.

15 The certified transcript is the only official
16 transcript which may be relied upon for the purposes of
17 verbatim citation and is the only transcript which will be
18 efiled in the case docket.
19
20
21
22
23
24
25

UNCERTIFIED DRAFT REALTIME TRANSCRIPT
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1 purposes of this form, they don't consider a diagnosis a
2 clinical diagnosis. They just consider it the minimal medical
3 evidence required to have someone qualify for Medicaid --
4 Medicare. Excuse me.

5 So, again, I'm not sure why SSA didn't do a separate
6 form for B-read-only, but this is what they did.

7 THE COURT: Okay.

8 MR. BECHTOLD: And so -- and furthermore, I mean,
9 they directed CARD to fill it out this way.

10 So I think when we're talking about the elements of
11 the False Claims Act, you know, one of the most important
12 things for materiality is how the government responds to what
13 CARD has been doing.

14 CARD has been doing these environmental health
15 hazard checklists 12 years the way SSA told them to, and
16 obviously there's been many instances where the CARD staff
17 have been informed, you know, the SSA staff, that this was a
18 B-read-only. And so it's not a surprise to CARD -- I mean, to
19 SSA staff that there are B-read onlys, qualifications under
20 the HH checklist.

21 So, you know, a couple documents. Docket No. 80-40,
22 80-41, 80-42 are several emails back and forth between SSA and
23 CARD staff where they show that it's B-read-only. So the SSA
24 staff are fully aware that these EHH forms are occasionally,
25 or pretty often based only on outside positive read and not by

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NOT TO BE USED FOR VERBATIM CITATION

1 staff would certainly say: Well, that's not right. You know,
2 having been aware of, through these two separate
3 investigations, that this is what CARD was doing, it was no
4 surprise to them because CARD had been doing it all along.

5 THE COURT: So, Mr. Bechtold, back to the question I
6 asked about *scienter*. That all may be true, but how do I make
7 that determination as a matter of law? Isn't that a factual
8 issue for the jury to resolve?

9 MR. BECHTOLD: The actual behavior of the SSA?

10 THE COURT: And what, what they knew. Now you said
11 they conducted investigations and they may know a lot. But
12 you're asking me to decide, as a matter of law, that they knew
13 enough to get over the materiality hurdle.

14 MR. BECHTOLD: Well, I think that's the actual
15 behavior hurdle from *Escobar*.

16 THE COURT: Right.

17 MR. BECHTOLD: So what did they actually do? What
18 did they actually do is keep accepting those B-read-only HH
19 forms and processing people for Medicare. So what's what
20 their actual behavior is.

21 So they know. And, believe me, CARD staff has been
22 in contact with the SSA virtually, you know, every week for
23 years. SSA staff know that this, that this is part of the
24 lawsuit. They know these issues, and they still keep
25 accepting it.

UNCERTIFIED DRAFT REALTIME TRANSCRIPT
NOT TO BE USED FOR VERBATIM CITATION

1 So, Your Honor, just because CARD relied on all
2 those B-readers for all those forms, all they were doing is
3 following the law. And that's what SSA told them to do, and
4 that's what they've done ever since 2010, and every part of
5 the government is aware of that, and every part of the
6 government sustains it. It can't be a false claim when
7 everything that the CARD is doing is approved by the
8 government. It doesn't make sense.

9 Thanks.

10 THE COURT: All right. The matter is fully
11 submitted.

12 I came into this hearing this afternoon, after
13 having read a tremendous amount in this case, with the
14 impression that probably summary judgment was not going to be
15 granted, as you both requested, on the part of either party
16 and that we're going to have a trial in this case.

17 I will carefully consider all of the arguments that
18 have been made. I will be provided with a rough draft of the
19 transcript. We'll reread it. But I remain of the opinion
20 that most likely we're going to have a trial in this case.
21 Now what we try is yet to be determined.

22 I have, before me, two other cases that are set to
23 go to trial in October and early December that have a pile of
24 motions in them that I need to get to before I get to this, so
25 don't hold your breath, expecting you're going to get a ruling

From: Stephanie Shaw <sshaw@libbyasbestos.org>
Sent: Tuesday, April 11, 2023 8:56 AM
To: Tracy Mcnew <tracy@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>
Subject: FW: EHH Medicare

Good Morning Ladies,

Please see below information on B_read EHH's. I will let you know once I have established a meeting with Medicare to ensure you can attend as well.

Stephanie

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Thursday, April 6, 2023 1:15 PM
To: Stephanie Shaw <sshaw@libbyasbestos.org>
Subject: EHH Medicare

Good Afternoon Stephanie.

I appreciate you taking the time to discuss your processes earlier today. I relayed the information to my regional office and because you are telling me that CARD does not consider the individual diagnosed based on an interpretation by a B reader, we are unable to approve EHH Medicare claims involving the B reader at this time. Someone from our agency or Medicare will be reaching out directly in the next couple of weeks.

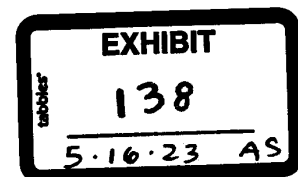
Thank you.

Terra Whiteman, District Manager
Social Security Administration
Kalispell, MT FO 872



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From: Stephanie Shaw <sshaw@libbyasbestos.org>
Sent: Thursday, April 06, 2023 9:21 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: [EXTERNAL] RE: EHH Medicare

I got caught on a phone call with Pilot, will call as soon as I am done.

Stephanie

From: Stephanie Shaw
Sent: Thursday, April 6, 2023 8:20 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: RE: EHH Medicare

Good Morning ☺

I am in, but can only be transferred to the VM because it is after hours. I will call right at 9AM ☺

Stephanie

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Wednesday, April 5, 2023 5:10 PM
To: Stephanie Shaw <sshaw@libbyasbestos.org>
Cc: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: EHH Medicare

Good Afternoon.

I would like to try to connect with you if possible tomorrow sometime. I will be in the office from 7:00 – 3:30. If you can call on the EHH line when it is convenient for you that would be great. Thank you.

Terra Whiteman, District Manager
Social Security Administration
Kalispell, MT FO 872



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From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Friday, April 28, 2023 8:53 AM
To: Tracy Mcnew <tracy@libbyasbestos.org>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: FW: EHH Medicare and CARD

Good Morning.

I have forwarded this information on to our Center for Program Support.

Thank you.

Terra Whiteman, District Manager
Social Security Administration
Kalispell, MT FO 872



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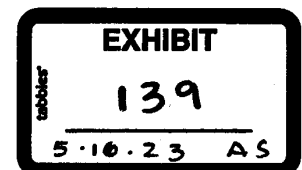
From: Tracy Mcnew <tracy@libbyasbestos.org>
Sent: Thursday, April 27, 2023 3:30 PM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Terra,

If SSA has not changed any of its rules, CARD will continue to submit EHH checklists for patients based solely on positive B reads and outside CT reads as it has in the past. I've attached a document that explains CARD's diagnostic methods and how there are two versions - clinical (CARD provider diagnoses) and non-clinical (B-read or outside CT read only). Please let me know if you have any questions or if you don't want us to submit the non-clinical diagnosis EHH forms.

Tracy

Tracy McNew, LPN, MPA



Executive Director
Center for Asbestos Related Disease
214 East 3rd Street
Libby, MT 59923
(406) 293-9274 ext. 126
www.libbyasbestos.org

From: Tracy Mcnew
Sent: Wednesday, April 26, 2023 4:59 PM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>;
Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Thank you, Terra.
Tracy

Tracy McNew, LPN, MPA
Executive Director
Center for Asbestos Related Disease
214 East 3rd Street
Libby, MT 59923
(406) 293-9274 ext. 126
www.libbyasbestos.org

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Wednesday, April 26, 2023 2:47 PM
To: Tracy Mcnew <tracy@libbyasbestos.org>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>;
Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Good Afternoon Tracy

I wanted to get you an interim answer to this email. I think there may be confusion. Stephanie reached out to SSA and made us aware that CARD does not considering the patients as diagnosed despite signing off on the checklist when a B reader is involved. SSA has not changed any of its rules.

I am forwarding your information to our Center for Program Support so they can address any of your concerns. I will have them reach out to you directly. Thank you.

Terra Whiteman, District Manager
Social Security Administration

Kalispell, MT FO 872



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and tomorrow.

With you through life's journey. Securing today and tomorrow.

Open a **my Social Security** account today at www.socialsecurity.gov/myaccount.

From: Tracy Mcnew <tracy@libbyasbestos.org>
Sent: Wednesday, April 12, 2023 8:33 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrisette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: [EXTERNAL] EHH Medicare and CARD

Hi Terra,

My name is Tracy McNew, I am the Executive Director of the CARD Clinic. Thanks for your email to Stephanie Shaw about EHH checklists indicating that SSA will no longer be approving Medicare based on positive reads by B readers. Stephanie forwarded your email to her supervisor and me so that we can implement this change at an organizational level at CARD. Since this is an organizational issue, I request that you please direct communication on this topic to me moving forward.

We're happy to do whatever the Social Security Administration asks us to do, so we will plan to implement a change in our processes immediately. Just to be clear, SSA has now changed its position regarding Medicare eligibility based on positive B reads, and CARD should no longer fill out EHH forms for patients with no CARD diagnosis, even if they have a positive outside B-read or CT read. Is that correct? Please send us formal documentation of this change. Since the program began, we have been filling EHH forms out if requested, for either CARD-diagnosed patients or for patients with a positive outside read only. This was based on direction from, and working closely with, SSA staff members who were present in Libby and remained very involved in the early stages of this process following the Affordable Care Act's passage.

Do you know what will happen to patients who have been given Medicare in the past based on a positive outside read only? This is a question that I'm sure will come up when we begin to educate our patients and staff about the change.

Tracy

Tracy McNew, MPA
Executive Director
Center for Asbestos Related Disease, Inc. (CARD Clinic)
214 East 3rd Street
Libby, MT 59923
(406) 293-9274 Ext. 126